TOWN OF ADDISON®
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AGENDA

REGULAR MEETING OF THE CITY COUNCIL

January 11, 2005

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

#2a -	Approval of the Minutes for the December 14, 2004 Council Meeting.
#2b -	Consideration of approval of a Resolution authorizing the City Manager to enter into a contract in the amount of $35,000 with Teague Nall and Perkins, Inc. for engineering, survey, and Easement prep services.
#2c -	Consideration of a Resolution authorizing the City Manager to enter into an interlocal agreement with Texas Local Government Purchasing Cooperative for the purpose of cooperative purchasing.
#2d -	Consideration of a Resolution authorizing the City Manager to enter into an advertising contract with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives.
#2e -	Consideration of a Resolution authorizing the City Manager to enter into an Interlocal Agreement in an amount not to exceed $20,000 with the City of Farmers Branch for the construction of an Emergency Water System Interconnection, subject to the final review and approval of the City Manager and City Attorney.

Item #R3 - Presentation of the Government Finance Officers Association (GFOA) "Certificate of Achievement for Excellence in Financial Reporting" to the Town of Addison for its Comprehensive Annual Financial Report (CAFR).

Item #R4 - **PUBLIC HEARING** and consideration of an ordinance approving concept plan for four tracts, and a preliminary development plan for one tract of land located in the UC, Urban Center district, on 9.919 acres at the northwest corner of Quorum Drive and Goodman Avenue, on application from Fairfield Residential, LLC, represented by Mr. Paul Johnston.

Item #R5 - Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Signs, for Charter Furniture, located at 15101 Midway Road, on application from Charter Furniture.

Item #R6 - **PUBLIC HEARING** and first reading of an ordinance granting an electric utility franchise to TXU Electric Delivery Company.

Item #R7 - Consideration of a resolution of the Town of Addison, Texas authorizing intervention before the Railroad Commission of Texas in Gas Utilities Docket (GUD) No. 9530; authorizing participation with other cities served by Atmos Energy Corporation, formerly known as TXU Gas Company, in administrative and court proceedings involving a gas cost prudence review related to a filing made in September of 2004 as required by the final order in GUD No. 8664; designating a representative of the city to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses.

Item #R8 - Consideration of a resolution of the Town of Addison, Texas suspending the proposal by Atmos Energy Corp. to implement interim Gas Reliability Infrastructure Program (GRIP) rate adjustments for gas utility investment in 2003; authorizing participation with other cities served by Atmos Energy Corp., Mid-Tex Division, in a review and inquiry into the basis and reasonableness of the proposed rate adjustments; authorizing

intervention in administrative and court proceedings involving the proposed GRIP rate adjustments; designating a representative of the Town to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses.

Item #R9 - Consideration of approval and a Resolution authorizing the City Manager to award three additional five-year lease extension options with Brinker Texas, L.P. on property located at 4500 Belt Line Road within the Town.

Item #R10- Consideration of a Resolution authorizing the City Manager to negotiate and enter into a contract with Allyn & Company to provide public affairs and media relations consultation for the Town.

Adjourn Meeting

Posted 5:00 p.m.
January 7, 2005
Carmen Moran
City Secretary

THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST 48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

December 14, 2004
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Chow, Niemann, Silver, Turner,
Absent: Hirsch

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Wendell Pickens (Fire), Marty Zielke (Police).

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the November 23, 2004 Council Meeting. (Approved)

Item #2b – Consideration of authorization for final payment of $10,922.50 to Davis Excavation, and construction of the Westfield Addition Water Service Replacement Project. (Approved)

Item #2c – Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of $105,500 with Nortex Concrete Lift and Stabilization for raising and undersealing concrete pavement on Midway Road. (Approved R04-119)

Councilmember Silver moved to duly approve the above listed items. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R3 – Consideration of a Resolution by the City Council of the Town of Addison, Texas authorizing the re-appointment of Larry Dwight as Municipal Judge of Addison Municipal Court of Record No. 1 and authorizing the City Manager to enter into a compensation agreement with Larry Dwight to perform services as a Municipal Judge.

Councilmember Turner moved to duly pass Resolution No. R04-120 authorizing the City Manager to enter into a compensation agreement with Larry Dwight to perform services as a Municipal Judge. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R4 – Consideration of a Resolution by the City Council of the Town of Addison, Texas authorizing the re-appointment of U.H. Specht as Alternate City Judge of Addison Municipal Court of Record No. 1 and authorizing the City Manager to enter into a compensation agreement with U.H. Specht to perform services as a Municipal Judge.

Councilmember Niemann moved to duly pass Resolution No. R04-121 authorizing the City Manager to enter into a compensation agreement with Larry Dwight to perform services as an Alternate Municipal Judge. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R5 – Consideration of a Resolution by the City Council of the Town of Addison, Texas authorizing the re-appointment of Albert Fenton as Alternate City Judge of Addison Municipal Court of Record No. 1 and authorizing the City Manager to enter into a compensation agreement with Albert Fenton to perform services as a Municipal Judge.

Councilmember Chow moved to duly pass Resolution No. R04-122 authorizing the City Manager to enter into a compensation agreement with Albert Fenton to perform services as an Alternate Municipal Judge. Councilmember Braun seconded. The motion carried.

Mayor Wheeler administered the Oath of Offices to Judges Larry Dwight, Albert Fenton and U.H. Specht.

Item #R6 – **PUBLIC HEARING** and consideration of approval of a final plat for one lot of 5.43 acres and one lot of 2.933 acres, located at 5055 Keller Springs Road and 5057 Keller Springs Road, on application from Holt Lunsford Commercial, Inc. represented by Mr. David Parker.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Niemann moved duly to pass approval of a final plat for one lot of 5.43 acres and one lot of 2.933 acres, located at 5055 Keller Springs Road and 5057 Keller Springs Road, on application from Holt Lunsford Commercial, Inc. represented by Mr. David Parker, subject to the following condition:

1. Remove parking easement from plat.

Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R7 – **PUBLIC HEARING** and consideration of approval of a replat for one lot of .599 acres and one lot of .370 acres, located on the east and west sides of the Landmark Extension, on application from the Town of Addison.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Turner moved to duly pass and approve a replat for one lot of .599 acres and one lot of .370 acres, located on the east and west sides of the Landmark Extension, on application from the Town of Addison, subject to the following conditions.

-The 0.912 acres between Lots 1 & 2 should be designated as a right-of-way dedication for Landmark Extension.

-The block of the replat should read as "Lots 1 & 2, Block 3, Quorum West Addition"

Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R8 – **PUBLIC HEARING** and consideration of an Ordinance amending Appendix B, "Subdivisions" of the Code of Ordinances of the City, the same being Ordinance No. 261 of the City, by amending Section III, "Definitions," to amend the definition of the term "Subdivision" and add a definition for the term "Plat;" amending Section VI, "Zoning," by providing that all subdivisions must conform to applicable zoning regulations: amending Section XVII by Authorizing the Director of Development Services to approve certain amending plats; Amending Sections IV, VII, VIII, IX, X, XI, and XII as set forth herein; providing a savings clause; providing a severability clause; and providing an effective date, on application from the Town of Addison, represented by Ms. Carmen Moran.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Niemann moved to duly pass Ordinance No. 004-056 amending Appendix B, "Subdivisions" of the Code of Ordinances of the City, the same being Ordinance No. 261 of the City, by amending Section III, "Definitions," to amend the definition of the term "Subdivision" and add a definition for the term "Plat;" amending Section VI, "Zoning," by providing that all subdivisions must conform to applicable zoning regulations: amending Section XVII by Authorizing the Director of Development Services to approve certain amending plats; Amending Sections IV, VII, VIII, IX, X, XI, and XII as set forth herein; providing a savings clause; providing a severability clause; and providing an effective date,

on application from the Town of Addison, represented by Ms. Carmen Moran, subject to changes in Sections 3, 7 and 9 and final review by the City Attorney.

Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R9 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Studio Salon & Fashion, located at 4900 Belt Line Road, Suite 250, on application from Studio Salon & Fashion.

Councilmember Niemann moved to deny the request for a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Studio Salon & Fashion, located at 4900 Belt Line Road, Suite 250, on application from Studio Salon & Fashion, represented by Mr. Robert Brooks, Studio Owner.

Councilmember Silver seconded. The motion carried.

Voting Aye: None
Voting Nay: Wheeler, Braun, Chow, Niemann, Silver, Turner
Absent: Hirsch

Item #R10 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-185, Specifications, for Lawry's, located at 14655 Dallas Pkwy, on application from Brown Graphics, Inc. Represented by Mr. Wayne Wood, General Manager at Lawry's.

Councilmember Silver moved to duly pass Ordinance No. 004-057 approving a meritorious exception to Chapter 62, Signs, Section 62-185, Specifications, for Lawry's, located at 14655 Dallas Pkwy, on application from Brown Graphics, Inc. subject to the following conditions:

1. Exposed neon shall not be allowed.
2. Dimension of sign face shall be six feet wide by 19 feet tall, with a total square footage of 114 square feet, and a total height of total sign to be 35 feet tall.

Councilmember Chow seconded. The motion carried.

Voting Aye: Braun, Chow, Silver, Turner
Voting Nay: Wheeler, Niemann
Absent: Hirsch

Item #R11 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Hometeriors, located at 14350 Marsh Lane, on

application from Hometeriors/The Gardner Group represented by Mr. Jim Gardner.

Councilmember Chow moved to deny the request for a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Hometeriors, located at 14350 Marsh Lane, on application from Hometeriors/The Gardner Group represented by Mr. Jim Gardner.

Councilmember Silver and Turner seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

Item #R12 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Sign, for Sam's, located at 4150 Belt Line Road, on application from Ben Bell.

Councilmember Turner moved to duly pass Ordinance 004-058 approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Sign, for Sam's, located at 4150 Belt Line Road, on application from Ben Bell.

Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Niemann, Silver, Turner
Voting Nay: None
Absent: Hirsch

EXECUTIVE SESSION. At 9:02 p.m., Mayor Wheeler announced that the Council would convene into Executive Session.

Item #ES1 – Closed (executive) session of the City Council pursuant to Chapter 551.071 Texas Government code, to conduct a private consultation with its attorney to seek the advice of its attorney about contemplated litigation and on a matter in which the duty of the attorney to the governmental body under the Texas Displinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 552, Texas Government Code, City Council Agenda 10-26-04.

The Council came out of Executive Session at 9:30 p.m.

There being no further business before the Council, the meeting was adjourned.

_____
Mayor

Attest:

_____
City Secretary

Council Agenda Item:

SUMMARY:

This item is for the approval of an Engineering Services Contract for the design of the Addison on Brookhaven Apartments and the Greenhaven Village Apartments Water System Improvements.

FINANCIAL IMPACT:

Budgeted Amount:	$177,000
Cost:	$35,000.00 (Engineering, Survey, Easement Prep Only)
Source of Funds:	Funds are available from the FY 2004-05 Water and Sewer Fund, as indicated in the Five Year Capital Replacement Program.

BACKGROUND:

This project was established by the Public Works Department from a need to replace an existing undersized 6-inch diameter water line with an 8-inch diameter water line in the Addison on Brookhaven Apartments and the Greenhaven Village Apartment complexes. This project will also link the two dead-end distribution line systems with a connection line across the property limits. The connection across the apartment complexes will require the preparation of temporary construction easements and permanent utility easements. This portion of the Town's water system is in a deteriorated condition primarily due to age.

The attached proposal for engineering services was negotiated with the firm of Teague Nall and Perkins, Inc., in the total amount not to exceed $35,000.00, for the design of the replacement of the existing 6-inch water main system. Their fee is broken down according to task as follows:

Construction Plan Preparation, Construction Administration	$24,000.00
Design Survey and Preparation of 2 Permanent and 2 temporary Construction Easements	$11,000.00
Total Fee for Services	$35,000.00

RECOMMENDATION:

It is recommended that Council authorize the City Manager to enter into a contract with Teague Nall and Perkins, Inc., in the amount of $35,000.00, for engineering services associated with the design of the Addison on Brookhaven Apartments and the Greenhaven Village Water System Improvements project.

TEAGUE NALL AND PERKINS INC.
ENGINEERS ◆ SURVEYORS ◆ CONSULTANTS

#2b-2

AUTHORIZATION FOR PROFESSIONAL SERVICES

PROJECT NAME: Greenhaven Village and Addison of Brookhaven Apartments Waterline Improvements

TNP PROJECT NUMBER: **ADD 04305**

CLIENT: **Town of Addison**
Attn: Steve Chutchian, P.E.
ADDRESS: **P.O. Box 9010**
Addison, Texas 75001-9010

The Town of Addison (CLIENT or TOWN) hereby requests and authorizes Teague Nall and Perkins, Inc., (ENGINEER) to perform the following services:

SCOPE: Provide professional engineering services for construction plan preparation for public water lines partially within the Greenhaven Village and Addison of Brookhaven apartment complexes, located adjacent to Brookhaven Club Drive between Spring Valley and Marsh Lane within the Town of Addison, Texas. A detailed project description and scope of services is included as Attachment 'A' and is made a part hereto.

COMPENSATION: Services rendered for Basic Services as summarized above and itemized in Attachment 'A', shall be billed monthly based on the ENGINEER's estimate of the percentage of work completed, and paid promptly upon receipt of invoice. Agreement to this contract acknowledges available funding for the proposed services. The Town of Addison agrees to pay the ENGINEER the following fixed fees:

1. **BASIC SERVICES:** The CLIENT agrees to pay the ENGINEER for:

   Construction Plan Preparation and
   Construction Administration — $24,000 fixed fee

2. **SPECIAL SERVICES:** Compensation for Special Services not covered by the Basic Services provided for herein shall be as shown below. Special Services are itemized specifically in Attachment 'A'. The Town of Addison agrees to pay the ENGINEER the following:

   Design Survey and Preparation of
   Easements (2 Perm. Utility and 2 Temp. Construction) — $11,000 fixed fee

Delays by the CLIENT in excess of 12 months to the project completion, due to circumstances out of ENGINEER'S control, shall result in appropriate adjustments to compensation.

3. **EXTRA SERVICES:** Engineering services provided by the ENGINEER not included in Attachment A, and approved in writing by the TOWN, shall be considered additional work and shall be reimbursed at standard TNP hourly rates as listed in Attachment 'C', or TNP rates for items provided in-house, or direct expenses time a multiplier of 1.10 for non-labor, subcontract or mileage items. ENGINEER shall not be entitled to compensation, payment or reimbursement of any kind for any Extra Services provided by ENGINEER without the prior written approval of the TOWN.

SCHEDULE: The proposed services shall begin within 10 working days of authorization to proceed. A design schedule is included as Attachment 'B', and made a part hereto.

Please execute and return a signed copy for our files.

Approved by CLIENT:
Town of Addison

By: _____
Ron Whitehead

Title: _____
City Manager

Date: _____

Accepted by ENGINEER:
Teague Nall and Perkins, Inc.

By: Mark J. Holiday
Mark J. Holiday, P.E.

Title: Principal

Date: 12-6-04

SUPPLEMENTAL PROVISIONS

1. AUTHORIZATION TO PROCEED
Signing this form shall be construed as authorization by CLIENT for TNP, Inc. to proceed with the work, unless otherwise provided for in the authorization.

2. LABOR COSTS
TNP, Inc.'s Labor Costs shall be the amount of salaries paid TNP, Inc.'s employees for work performed on CLIENTS Project plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums, and benefits.

3. DIRECT EXPENSES
TNP, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at TNP, Inc.'s current rate when its, or its employee's, automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these EXPENSES shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TNP, Inc.

4. OUTSIDE SERVICES
When technical or professional services are furnished by an outside source, when approved by CLIENT, an additional amount shall be added to the cost of these services for TNP, Inc.'s administrative costs, as provided herein.

5. ENGINEER'S OPINION OF PROBABLE COST
Any cost opinions provided by TNP, Inc. will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures TNP, Inc. cannot warrant that bids or ultimate construction costs will not vary from these cost opinions.

6. PROFESSIONAL STANDARDS
TNP, Inc. shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in CLIENT's community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Authorization. TNP, Inc. makes no other warranty, expressed or implied.

7. TERMINATION
Either CLIENT or TNP, Inc. may terminate this authorization by giving 30 days written notice to the other party. In such event CLIENT shall forthwith pay TNP, Inc. in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization.

8. ARBITRATION
All claims, disputes, and other matters in question arising out of, or relating to, this Authorization or the breach thereof may be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining. Either CLIENT or TNP, Inc. may initiate a request for such arbitration, but consent of the other party to such procedure shall be **mandatory. No arbitration arising out of, or relating to this Authorization shall include, by consolidation, joinder, or in any other manner, any additional party not a party to this Authorization.**

9. LEGAL EXPENSES
In the event legal action is brought by CLIENT or TNP, Inc. against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court.

10. PAYMENT TO TNP, INC.
Monthly invoices will be issued by TNP, Inc. for all work performed under the terms of this agreement. Invoices are due and payable on receipt. Interest at the rate of 1½% per month will be charged on all past-due amounts, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law.

11. LIMITATION OF LIABILITY
TNP, Inc.'s liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this agreement.

12. ADDITIONAL SERVICES
Services in addition to those specified in Scope will be provided by TNP, Inc. if authorized in writing by CLIENT. Additional services will be paid for by CLIENT as indicated in attached Basis of Compensation or as negotiated.

13. SALES TAX
In accordance with the State Sales Tax Codes, certain surveying services are taxable. Applicable sales tax is not included in the above proposed fee. Sales tax at an applicable rate will be indicated on invoice statements.

14. SURVEYING SERVICES
In accordance with the Professional Land Surveying Practices Act of 1989, the CLIENT is informed that any complaints about surveying services may be forwarded to the Texas Board of Professional Land Surveying, 7701 N. Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

15. INVALIDITY CLAUSE
In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.

16. PROJECT SITE SAFETY
TNP, Inc. has no duty or responsibility for project site safety.

17. DRAINAGE CLAUSE
TNP, Inc. In the performance of its services may be required to assess the impact of the Project on neighboring property owners. The parties to this Agreement recognize that the development of real property has the potential to increase water runoff on downstream properties, and that such increase in runoff increases the possibility of water damage to downstream properties. The CLIENT agrees to indemnify and hold the ENGINEER harmless from any and all claims and damages arising, directly or indirectly, from water or drainage damage to downstream properties resulting from the development and construction of the Project. CLIENT shall not be required to reimburse ENGINEER for any claims or expenses arising out of the Project if it is determined by a court of competent jurisdiction that ENGINEER was negligent in the performance of its duties and obligations, and that ENGINEER's negligence was the direct cause of damage to a property downstream of the Project

ATTACHMENT 'A'
PROJECT DESCRIPTION AND SCOPE OF SERVICES

I. PROJECT DESCRIPTION

A. Location – The project shall be limited to replacement of public water lines partially within the Greenhaven Village and Addison of Brookhaven apartment complexes, both located adjacent to Brookhaven Club Drive between Spring Valley and Marsh Lane.

B. Purpose – The purpose of the project is to replace existing undersized 6"-diameter water lines within the properties, and to link the two dead-end distribution line systems with a connection line across property limits.

II. ASSUMPTIONS

A. The approximate amount of line to be included in the design is limited to 1,700 linear feet, and the alignment corridor for which replacement lines will be designed shall be in the same general location as existing lines. The TOWN has provided proposed lines sizes to be 8" in diameter.

B. The Addison of Brookhaven lines to be replaced include those from the Brookhaven Club drive entry to the bridge over Farmers Branch Creek, and the line adjacent to the northernmost swimming pool and gravel playground/volleyball facility.

C. The connecting line between the two systems shall be located in the southwestern most corner of the Addison of Brookhaven property and southeastern most corner of the Greenhaven property. Existing lines will be extended through the parking/driving areas, and cross the property line within one of two gaps between and behind existing building structures. Both gaps will be surveyed for evaluation of alignment geometric constraints.

III. ITEMIZED SCOPE OF BASIC SERVICES

Engineer will provide the following services for the development of the project:

A. ENGINEER shall compile a base plan from field survey data reflecting known existing TOWN utility lines, and known existing franchise utility lines for which ENGINEER is notified of their location in the field or layout map provided by the TOWN or utility companies. The ENGINEER does not take responsibility for the accuracy of the information provided, or the exact location of the existing facilities.

B. ENGINEER shall prepare preliminary design plans and opinion of probable costs. The preliminary plans shall be at 1"=20' horizontal scale and consist of: a title sheet, a project layout, general notes, construction sequencing, and TOWN standard construction details. It is assumed that the design will include replacement of up to 1,700 linear feet of 6" water line with 8" water lines. Only line segments that are to be bored rather than open cut shall be profiled, at 1"=2' vertical scale.

C. Submit preliminary plans to the Client for review, and meet with the TOWN staff to discuss the preliminary design plans, and incorporate TOWN comments and directives in the preparation of final construction plans, specifications and bid documents.

D. Prior to submission of final construction plans, the ENGINEER will perform a QA review of the plans and specifications incorporating previous Town comments.

E. Submit final construction plans and draft contract documents/specifications for review, and make appropriate revisions based on TOWN comments to prepare for contractor bidding. Along with final construction plans, the ENGINEER will submit on separate letterhead, a letter describing specifically what internal steps have been taken to perform the QA review of this project. The ENGINEER understands that the final plans and specifications will not be accepted by the TOWN without this letter.

F. Final bidding plans and specifications will be provided by the ENGINEER in .pdf format on CD to the TOWN Purchasing office for distribution to the contractors. The ENGINEER shall address contractor's technical questions about the project during bidding, assist the TOWN in obtaining bids, evaluating the bids for award recommendation and will prepare the contracts for execution. The Engineer will attend one pre-bid and one pre-construction meeting as requested.

G. The ENGINEER will prepare change orders, if necessary, and participate in final inspection of the various units of work with the TOWN.

H. ENGINEER shall provide record drawings to the TOWN developed from construction notes and revisions compiled by the contractor and the TOWN's resident project representative. Record drawings shall be provided in electronic form, including .PDFs and CAD files, and mylars.

IV. ITEMIZED SCOPE OF SPECIAL SERVICES

The ENGINEER shall render the following professional services necessary for the development of the Project:

A. ENGINEER shall perform field surveys for design, including comprehensive topography along the complete routing corridor within the design limits of the Basic Services. Survey corridor shall be considered building-to-building either side of the existing line routes. Existing features to be located include: closest building corners, carports, curbs, trees, fencelines, sidewalks, firelanes, visibly marked existing utility features such as valves, meters, hydrants, manholes, cleanouts, franchise utilities, A/C units, power poles, etc. The survey will be prepared based on the NAD 83 Coordinate system.

B. ENGINEER shall prepare up to two (2) Permanent and Temporary Easement Documents/Exhibits.

V. EXTRA SERVICES

The following Professional Services are specifically excluded from the scope of work under this contract. Such items shall include, but are not limited to the following:

A. Preparation of additional real property transfer documents, exhibits, or acquisition.

B. Subcontract charges, photocopies, plan reproduction;

C. Preparation of special exhibits for public meetings;

D. Construction staking or daily inspection and observation of construction, and review of contractor pay requests.

E. Design, routing, or evaluation of lines outside the limits described in Attachment 'A', and utility relocations other than specified waterlines.

F. Evaluation/design of drainage improvements.

G. Detail water modeling, line sizing, and pressure calculations, design of pump stations or storage tanks, or evaluation of needs for such.

H. Geotechnical investigations, environmental impact statements, evaluation or permitting related to the TNRCC and Corps of Engineers.

I. Preparation of a Storm Water Pollution Prevention Plan and TCEQ Notice of Intent. The Engineer is not considered an "Operator" of the site. Contractor shall be responsible for plan and SWPPP implementation, maintenance, or modifications.

J. Irrigation relocation/repair plans

ATTACHMENT 'B'
PROJECT SCHEDULE

The proposed services shall begin within 10 working days of signed authorization to proceed. TNP shall endeavor to accomplish the work in accordance with the schedule shown below. Changes in the scope of work shall result in corresponding revisions to the work schedule. All schedules exclude December 24-27 and December 31-Jan 2, and are subject to the amount of time necessary for the Client to complete necessary reviews.

A. Perform field surveys and data collection in 21 working days.

B. Perform a QA review and submit preliminary construction plans for review within 50 calendar days from completion of survey.

C. Perform a QA review and submit final construction plans and draft bid documents within 21 calendar days from review meeting with Client.

ATTACHMENT C

TEAGUE NALL AND PERKINS, INC.

Standard Rate Schedule for Reimbursable/Multiplier Contracts

Effective January 1, 2004 to December 31, 2004*

Engineering / Technical	From		To	
Principal	$110	-	$200	Per Hour
Project Manager	$90	-	$140	Per Hour
IT Manager	$80	-	$100	Per Hour
Senior Engineer	$90	-	$130	Per Hour
Engineer	$70	-	$100	Per Hour
Graduate Engineer	$65	-	$90	Per Hour
Landscape Architect / Planner	$80	-	$95	Per Hour
Designer	$75	-	$95	Per Hour
Senior Designer	$85	-	$115	Per Hour
CAD Draftsman	$30	-	$55	Per Hour
CAD Technician	$50	-	$75	Per Hour
Senior CAD Technician	$65	-	$85	Per Hour
IT Technician	$55	-	$75	Per Hour
Clerical	$40	-	$65	Per Hour
Resident Project Representative	$40	-	$65	Per Hour

Surveying			
Survey Office Manager	$115	-	$120
R.P.L.S.	$90	-	$110
Senior Survey Technician	$65	-	$80
Junior Survey Technician	$50	-	$65
2-Person Field Crew w/Equipment	$90		
3-Person Field Crew w/Equipment	$105		
4-Person Field Crew w/Equipment	$130		
2-Person G.P.S. Crew w/Equipment	$130		
3-Person G.P.S. Crew w/Equipment	$150		
1-Person Robotic Crew w/Equipment	$90		
2-Person Robotic Crew w/Equipment	$110		
3-Person Robotic Crew w/Equipment	$125		

Direct Cost Reimbursables		
Photocopies	$0.10/page	letter and legal size bond paper, B&W
	$0.20/page	11" x 17" size bond paper, B&W
	$2.00/page	22" x 34" and larger bond paper or vellum, B&W
Plots	$1.00/page	11" x 17" size bond paper, B&W
	$2.00/page	11" x 17" size bond paper, color
	$2.00/page	22"x34" and larger bond paper or vellum, B&W
	$4.00/page	22"x34" and larger bond paper or vellum, color
	$4.00/page	22"x34" and larger mylar or acetate, B&W
Mileage	$0.36/mile	

All Subcontracted and outsourced services billed at rates comparable to TNP's billing rateshown above.

* Rates shown are for calendar year 2004 and are subject to change in subsequent years.

Council Agenda Item: #2c

SUMMARY:
Staff requests approval of an Interlocal Agreement with Texas Local Government Purchasing Cooperative for the purpose of cooperative purchasing.

FINANCIAL IMPACT:
The cost to joint the Texas Local Government Purchasing Cooperative is $200 per year, which can be absorbed within the Finance Department budget.

BACKGROUND:
The Texas Local Government Purchasing Cooperative is an administrative agency created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to obtain the benefits and efficiencies that can accrue to members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods and services. The Cooperative is governed by a seven–member board of trustees; four trustees are elected officials or employees of school districts, two are elected officials or employees of municipalities and one is an elected official or employee of a county. The Cooperative is sponsored by the Texas Municipal League, Texas Association of Counties and the Texas Association of School Boards. Attached is a copy of the Organizational interlocal Agreement from January 26, 1998 and Bylaws adopted March 9, 2003 for reference.

The Cooperative is open to all local governments, nonprofits and other political subdivisions of the State of Texas. The annual membership fee is $200.00. The membership fee covers access, training, support for the cooperative awarded contracts and the BuyBoard e-commerce system. The Cooperative is commonly referred to as BuyBoard since the e-commerce system is its most visible service. The cost for vendors to participate is typically 2% of the bid price.

The primary benefit of membership in the cooperative is the ability to utilize the bids of other entities. Specifically, this interlocal agreement will allow the Town of Addison to purchase goods and services at the prices obtained in the bids of entities participating in the cooperative. In doing so, the Town will be able to obtain goods and services in a more efficient and cost effective manner. Staff anticipates using this cooperative for purchases of item such as building maintenance equipment, public safety supplies and equipment, custodial supplies, furniture and public works supplies and equipment.

The Town of Addison is able to be a member of the cooperative purchasing group, such as the Texas Local Government Purchasing Cooperative, pursuant to Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.102.

Cities in the north Texas area that belong to the Texas Local Government Purchasing Cooperative include Arlington, Carrollton, Coppell, Dallas, Farmers Branch, Frisco, Garland, Grand Prairie, Grapevine, Irving, Lewisville, Mesquite, McKinney, Plano, Richardson, The Colony and University Park.

RECOMMENDATION:
Staff recommends approval of the attached resolution and interlocal agreement.

RESOLUTION NO. R_____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISION, TEXAS, AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE FOR THE PURCHASE OF GOODS AND SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Local Government Purchasing Cooperative (the "Cooperative") is an administrative agency of cooperating local governments created in accordance with and pursuant to Chapter 791, Texas Government Code (the same being the Interlocal Cooperation Act (the "Act")), for the purpose of obtaining the benefits and efficiencies that can accrue to members of a cooperative, complying with state bidding requirements, identifying qualified vendors of commodities, goods and services, and relieving the burdens of governmental purchasing by effectively using current technology and realizing economies of scale; and

WHEREAS, the Cooperative was formed in 1998 by four independent school districts through the execution of an agreement entitled "Organizational Interlocal Agreement" (the "Organizational Agreement"), which provides, among other things, that any local government may become a party to the Organizational Agreement by electing to become a Cooperative member and by executing an Interlocal Participation Agreement (the form of which is attached hereto as Exhibit A) which adopts the Organizational Agreement; and

WHEREAS, the Town of Addison, Texas (the "Town") is of the opinion that participation in the Cooperative's purchasing program will be highly beneficial to the taxpayers of the Town through the efficiencies and potential savings to be realized and pursuant to the authority granted by the Act, as amended, desires to participate in the statewide purchasing program; and

WHEREAS, by the adoption of this Resolution the Town of Addison elects to become a Cooperative Member in the Cooperative and authorizes the execution of the said Interlocal Participation Agreement so that the Town may participate with other local governments in fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs, functions and services.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The above and foregoing premises are true and are incorporated herein and made a part hereof.

Section 2. The Town of Addison, Texas hereby elects to become a member of the Texas Local Government Purchasing Cooperative.

Section 3. The City Manager of the Town is hereby authorized to execute the Interlocal Participation Agreement, a true and correct copy of which is attached hereto as Exhibit A, which includes the adoption and approval of the Organizational Interlocal Agreement previously executed and adopted by two or more local governments.

Section 4. From time to time and in its sole discretion, Town of Addison agrees to identify for the Cooperative its needs for goods and services, including but not limited to, instructional, maintenance, custodial, and food service goods and services, on the Cooperative's Purchasing Program and award contracts for those items, whereby the Cooperative Members may be allowed to purchase those items from the Cooperative's contracts; and that Cooperative is authorized to sign and deliver all necessary requests and other documents in connection therewith for an on behalf of the Cooperative Members that have elected to.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 11h day of January, 2005.

_____
R. Scott Wheeler, Mayor

ATTEST:

_____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

_____
Ken Dippel, City Attorney

EXHIBIT A

INTERLOCAL PARTICIPATION AGREEMENT

for the
Texas Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the Texas Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the Town of Addison of the State of Texas ("Cooperative Member"). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

WITNESSETH:

WHEREAS, the Cooperative Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code ("the Act"), to agree with other local governments to form purchasing cooperatives; and

WHEREAS, the Cooperative is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Town of Addison does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW BE IT RESOLVED that the Town of Addison in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Town of Addison by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.

2. **Term.** The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms unless

sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.

3. **Termination.**

    a. By the Town of Addison. This Agreement may be terminated by the Town of Addison at any time by thirty (30) days prior written notice to the Cooperative; provided all charges owed to the Cooperative and any vendor have been fully paid.

    b. By the Cooperative. The Cooperative may terminate this Agreement by:

        1. Giving ten (10) days notice by certified mail to the Town of Addison if the Town of Addison fails or refuses to make the payments or contributions as herein provided; or

        2. Giving thirty (30) days notice by certified mail to the Town of Addison.

    c. Termination Procedure. If the Town of Addison terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Town of Addison under any provision of this Article, the Town of Addison shall bear the full financial responsibility for any purchases occurring after the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. The Cooperative Member will not be entitled to a refund of membership dues paid.

4. **Payments.**

    a. The Town of Addison agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by the Town of Addison upon receipt of an invoice from the Cooperative or Cooperative Contractor. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by the Town of Addison or breach of this Agreement by Town of Addison.

    b. The Town of Addison will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related procurement documents for all unchallenged invoices. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall

be the exclusive obligation of the procuring Cooperative Member.

5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Town of Addison. These reports may be modified from time to time as deemed appropriate by the Cooperative.

6. **Administration.** The Town of Addison will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.

7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative. .

GENERAL PROVISIONS

1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.

2. **Bylaws.** The Town of Addison agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.

3. **Compensation.** The parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the local governments of Texas.

4. **Cooperation and Access.** The Town of Addison agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Town of Addison.

5. **Coordinator.** The Town of Addison agrees to appoint a program coordinator who shall have express authority to represent and bind the Town of Addison, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Town of Addison. The Town of Addison reserves the right to change the coordinator as needed by

giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.

6. **Current Revenue.** The Town of Addison hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Town of Addison.

7. **Defense and Prosecution of Claims.** The Town of Addison authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Town of Addison does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Town of Addison shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the Town of Addison hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.

8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.

9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Town of Addison electing

to participate in the Cooperative.

11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.

12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.

13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

TO BE COMPLETED BY THE COOPERATIVE:

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By: _____

Date: _____, _____

Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY TOWN OF ADDISON:

Town of Addison

By: _____

Signature of authorized representative of Town of Addison

Date: _____, _____

_____

Printed name and title of authorized representative

Coordinator for the Town of Addison is:

Shanna N. Sims

5350 Belt Line Road

Addison, TX 75001

Telephone: 972-450-7089

Fax: 972-450-7096

E-Mail: ssims@ci.addison.tx.us

ORGANIZATIONAL INTERLOCAL AGREEMENT
of the
Texas Local Government Statewide Purchasing Cooperative

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Organizational Interlocal Agreement ("Agreement"), effective the 26th day of January, 1998, and executed by and among the Rockdale ISD, the Lockhart ISD, the New Braunfels ISD, and the Hays Consolidated ISD, collectively referred to as the "Organizing Local Governments," and any other local government of the State of Texas that becomes a party hereto (who, together with the Organizing Local Governments, shall be collectively referred to as "Cooperative Members") and do hereby organize and create the Texas Local Government Statewide Purchasing Cooperative (Cooperative), an administrative agency created in accordance with Section 791.001 et seq. of the Texas Government Code ("the Act"), and, in accordance with these recitals:

WITNESSETH

WHEREAS, the Organizing Local Governments wish to create, in accordance with applicable Texas law, a purchasing cooperative to serve all participating local governments through the creation of a purchasing cooperative to assist Cooperative Members in compliance with state bidding requirements, in identifying qualified vendors of commodities, goods and services, in relieving the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings; and

WHEREAS, the Organizing Local Governments, acting in accordance with the Interlocal Cooperation Act (the "Interlocal Act"), Chapter 791, Texas Government Code, as amended, to cooperatively create the Cooperative for the purpose of fulfilling their respective public and governmental purposes, needs, objectives and programs; and

WHEREAS, the Organizing Local Governments have additionally determined that other local governments qualified to do so should be permitted to join with them through execution of an Interlocal Participation Agreement, as parties to this Agreement, in order to fulfill their own respective public purposes by participation in the Cooperative;

NOW, THEREFORE, the Organizing Local Governments and such additional local governments as assent hereto, have agreed, and hereby do agree upon the following terms and conditions, to participate in the Cooperative:

Article 1. Purposes of Cooperative.

(a) The Organizing Local Governments hereby agree to create the Cooperative for their benefit and for the benefit of other Cooperative Members.

(b) Cooperative shall be administered in accordance with and subject to the terms of this Agreement, its Bylaws, and other documents necessary to implement and carry out the purpose of the Cooperative.

(c) The purpose of the Cooperative is to obtain the benefits and efficiencies that can accrue to Cooperative Members by cooperating in the development of a concerted effort to comply with state bidding requirements, identification of qualified vendors of commodities, goods and services, relieving the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

Article 2. Governance.

Cooperative shall be governed and managed by its Board in accordance with the Bylaws of Cooperative.

Article 3. Powers and Duties.

The Organizing Local Governments and other Cooperative Members designate Cooperative as their administrative agency under the Act to administer the various programs selected by Cooperative Members.

The Organizing Local Governments hereby authorize the initial Board and the TASB Board to adopt the Cooperative Bylaws.

Article 4. Obligations of Cooperative Members.

(a) No Cooperative Member shall ever be liable to pay or be responsible for payment of any sum of money to Cooperative or to any other Cooperative Member or to any other person or party solely by reason of its execution of this Agreement.

(b) Any obligation of a Cooperative Member to pay any money to Cooperative under this Agreement shall arise only under the terms and provisions of a separate contract, agreement, or instrument (generally referred to as an Interlocal Participation Agreement) that has been formally and specifically approved by the governing body of the Cooperative Member, and which specifically states the purpose, terms, rights, and duties of the contracting parties.

Article 5. Additional Parties.

Any local government, as defined in the Act, may become a party to this

Agreement by the execution of an Interlocal Participation Agreement adopting this Agreement and electing to become a Cooperative Member.

Article 6. Term.

The term of this Agreement shall be one (1) year from the date hereof and shall automatically be renewed on each anniversary of the commencement date.

Article 7. Authorization of Participation.

Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in Cooperative.

Article 8. Current Revenue.

The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements, if any, required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.

Article 9. Compensation.

The parties agree that the contractual payment, if any, under this agreement are amounts that fairly compensate the respective parties for the services or functions performed under the Agreement.

Article 10. Execution and Delivery.

By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

EXECUTED AND DELIVERED by and between the Organizing Local Governments, and all local governments which subsequently elect to become Cooperative Members, as of the day and year first above written.

This Agreement is being executed by the Organizing Local Governments as separate agreements and at separate times, each of which shall be considered separately and collectively as an original complete copy of the Agreement, as if each Organizing Local government had executed the same copy.

Bylaws of the
Texas Local Government Purchasing Cooperative
(Adopted by the TASB Board on March 9, 2003)

The Texas Local Government Purchasing Cooperative (“Cooperative") has been created as an administrative agency of cooperating local governments and state agencies pursuant to the Interlocal Cooperation Act ("Act"), Chapter 791, Texas Government Code; and the Interlocal agreement ("Agreement or Agreements") between participating local governments and state agencies ("Cooperative Members") to purchase goods and services in the performance of their governmental functions.

1. PURPOSE AND OBJECTIVES

The general objectives are to facilitate compliance with state bidding requirements, to identify qualified vendors of goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for local governments and state agencies which elect to participate in the Cooperative, and to perform such other services as the Cooperative Board of Trustees ("Board") may authorize.

2. NATURE OF THE ORGANIZATION

The Cooperative is an administrative agency of local governments and state agencies. Public school districts must be members of the Texas Association of School Boards and their income must be described in Internal Revenue Code (“IRC”) section 115 in order to be eligible for membership in the Cooperative.

Each Cooperative Member shall abide by the Bylaws, Agreements, rules, and regulations provided for the Cooperative. The Cooperative is a statutorily authorized nonprofit contractual mechanism by which, through Interlocal agreements with other local governments and state agencies, Cooperative Members may collectively or individually discharge their governmental functions of purchasing goods and services and related activities.

3. ESTABLISHMENT OF THE BOARD

The Cooperative shall be governed by the Board. The Board shall operate the Cooperative on a nonprofit basis on behalf of the Cooperative Members pursuant to the Bylaws, Agreements, rules, and regulations, and shall have the further powers, duties, and functions as hereinafter set forth. All Board members, although maintaining their official capacity as elected officials or employees of local governments while serving upon this Board, shall act as representatives of all Cooperative Members.

4. BOARD QUALIFICATIONS

Each member of the Board must be either an elected official or an employee of a local government which is a Cooperative Member. Any Board member who, at the time of

appointment, is an elected official or employee of a Cooperative Member and who vacates that position, shall be deemed to have vacated the position on the Board, and the position shall be deemed vacant at that time.

5. COMPOSITION OF BOARD

The Board shall be made up of seven (7) members appointed by the TASB President. Four shall be elected officials or employees of school districts, two shall be elected officials or employees of municipalities, and one shall be an elected official or employee of a county.

No Cooperative Member shall have more than one member on the Board.

6. VACANCY

Any vacancy on the Board shall be filled in the same manner as the original appointment was made. If the appointment is not made within sixty (60) days, the Board shall fill the vacancy. Each vacancy on the Board shall reduce full membership of the Board by one (1) until such time as the vacancy is filled.

7. REMOVAL

Any Board member may be removed at the discretion of the TASB President. Any Board member who is absent from three consecutive regularly scheduled meetings may be subject to removal from the Board by a majority vote of the remaining Board members.

8. TERM OF THE BOARD

Pursuant to Board action and effective March 1, 2004, a term for each position on the Board will be established. Initially, three positions will have a term of three years, two positions will have a term of two years, and two positions will have a term of one year. Subsequent terms, excluding appointment for unexpired terms, shall be for three years. No person shall serve more than nine years. Board Members terms end on the last day of the month.

9. MEETINGS

The Board shall hold an annual meeting in the summer of each year for the purpose of electing officers, receiving reports, and for other business that may arise.

When called by the Chair, the Board shall hold such other meetings as are deemed appropriate and necessary for the transaction of its business. When any four Board members submit to the Chair a request in writing for a meeting, the Chair shall then call a meeting within 30 days of the latest of the four requests. The Chair shall set the time, date, and place of all meetings and shall give no less than five nor more than 30 days notice personally, by facsimile transmission, electronic transmission, by U.S. Mail, or by

any other means that is accessible to all Board members. Notice may be waived if a majority of the Board files with the Secretary a written instrument affirmatively waiving the notice requirements contained herein.

The Board meetings shall be held in Austin, Texas or at any other place upon proper notice to all Board members.

The Chair may conduct valid Board business without a meeting by arranging a telephone conference of the Board members or by mail ballot.

10. QUORUMS AND VOTING

A majority of members of the Board shall constitute a quorum. When a quorum exists, concurrence of a majority of those present and voting at any Board meeting shall be necessary for any official action taken by the Board.

A majority of the full Board must concur for action taken pursuant to a telephone conference or mail ballot to be valid, and such action shall be reported at the next meeting of the Board.

On any occasion when a meeting is called and a quorum is not present, the Chair shall conduct valid business by polling the Board members who are present and then polling the absent Board members by telephone or other electronic transmission.

In any poll taken by telephone or other electronic transmission, the Board members who are polled shall confirm their action in writing.

11. OFFICERS

The Board shall, at its annual meeting, elect one of its members, Chair, another of its members Vice Chair, and a Secretary, who may or may not be a member of the Board.

12. CHAIR

The Chair shall preside at all meetings of the Board and shall see that all actions and resolutions of the Board are carried into effect, and shall perform such other duties and have such other authority and powers as the Board may prescribe.

The Chair, on behalf of the Cooperative, shall have the authority to sign and execute all contracts and other instruments, and to conduct the business of the Cooperative between Board meetings.

13. VICE CHAIR

In the absence of the Chair or in the event of the Chair's inability or refusal to act, the Vice Chair shall perform the duties of the Chair, and when so acting shall have all the

duties of and be subject to all the restrictions upon the Chair. The Vice Chair shall perform such other duties as may be assigned by the Chair.

14. SECRETARY

The Secretary shall keep the minutes of all meetings of the Board; the Secretary shall attend to the giving and serving of all notices.

The Secretary shall have charge of the Cooperative's books, records, and such other books and papers as the Board may direct. The Secretary shall in general perform all duties incident to the office of Secretary subject to the control of the Board. In the absence of the Secretary, the Chair may appoint any person, other than the Chair, to act as Secretary during such absence.

15. EXPENSE REIMBURSEMENT

The appointed, qualified, and acting members of the Board shall serve without compensation, but shall be entitled to reimbursement of actual, necessary, and reasonable expenses incurred in the performance of his or her duties.

16. POWERS AND DUTIES

The Board, in addition to other powers and duties herein conferred and imposed or authorized by law, shall have the following powers and duties, which shall be exercised in the accomplishment of the Cooperative's public purpose:

A. The Board shall have the general power to approve or ratify contracts and agreements necessary or convenient to carry out any of the powers granted under the Bylaws and to perform any of the functions necessary for carrying out the purposes of the Cooperative, including services to Cooperative Members.

B. The Board shall make provision for proper accounting and reporting procedures for Cooperative Members.

C. The Board shall carry out all of the duties necessary for the proper operation and administration of the Cooperative on behalf of the Cooperative Members and to that end shall have all of the powers necessary for the effective administration of the affairs of the Cooperative.

D. The Chair shall be authorized to conduct the business of the Cooperative between Board meetings.

E. The Chair may appoint committees of the Board as the Chair deems necessary to properly perform or more effectively carry out the mission and purposes of the Cooperative. Unless the Board has authorized otherwise, the committees of the Board will cease to exist at the close of the fiscal year.

F. The TASB President may appoint special committees of the Cooperative from persons nominated for consideration by the Chair. Unless the Board has authorized otherwise, the special committees of the Cooperative will cease to exist at the close of the fiscal year.

G. The Board shall have the authority, on behalf of all Cooperative Members, to terminate membership of any Cooperative Member that fails to abide by the Bylaws, Agreements, rules, and regulations provided for the Cooperative or commits any other action that may be detrimental to the fiscal soundness or efficiency of the Cooperative.

H. The Board may hire or direct the hiring of attorneys, accountants, actuaries, or such other service providers that it may deem necessary for the proper administration of the Cooperative.

I. The Cooperative, may institute, defend, intervene, or participate in a judicial administrative or other governmental preceding or in an arbitration, mediation, or any other form of alternative dispute resolution. It may also assert a claim in its name on behalf of its members if (1) one or more members of the Cooperative have standing to assert a claim in their own right; (2) the interests the Cooperative seeks to protect are germane to its purposes; (3) and neither the claim asserted nor the relief requested requires the participation of a Cooperative Member. The Cooperative shall have the authority to be the class representative of the Cooperative Members. The Cooperative has the authority to engage counsel and appropriate experts for and on behalf of the Cooperative and Cooperative Members in respect of such claims, disputes, litigation or other matters that may arise under this provision.

J. The Secretary or designee shall be the custodian of the records and proceedings of the Cooperative.

17. FISCAL YEAR

The fiscal year for the Cooperative shall be from the first day of September of each year and ending on the 31st day of August of the succeeding year.

18. WITHDRAWAL FROM MEMBERSHIP

Any Cooperative Member may withdraw from the Cooperative during the term of the Agreements, only in accordance with the terms of the Agreements.

19. LIABILITY

Neither the Board, the administrator, nor any officers, trustees, board members, or employees shall be held liable for any action or omission to act on behalf of the Cooperative or the Cooperative Members unless caused by willful misconduct, and shall enjoy the broadest immunities permitted by law.

20. INDEMNIFICATION

The Cooperative shall indemnify and hold harmless (either directly or through insurance) any Board member or officer of the Cooperative, to the extent permitted by law, for any and all litigation, claims or other proceedings, including but not limited to reasonable attorney fees, costs, judgments, settlement payments and penalties, arising out of the management and operation of the Cooperative, unless the litigation, claim or other proceeding resulted from the willful misconduct of such person.

21. INSURANCE

The Cooperative may buy and maintain insurance on behalf of the trustees for any liability asserted against a trustee arising out of their relationships with the Cooperative.

22. COOPERATIVE TERMINATION

Notwithstanding anything contained herein to the contrary, upon dissolution of the Cooperative, assets will first be used to pay all debts and obligations; remaining Cooperatives shall be distributed for IRC 501(c)(3) public purposes through pro rata distributions to such Cooperative Members which are school districts or local governments or state agencies of the State of Texas as have contributed to the Cooperative, from the date of founding, forward, on a net cumulative basis, and which are Cooperative Members for the year(s) of dissolution. For purposes of the foregoing, a local government or state agency is an instrumentality or political subdivision for the State of Texas described in the Act, and whose income is described in IRC 115. The precise formula for distributions, and the timing thereof, shall be determined by the Board.

23. AMENDMENTS TO BYLAWS

The Board of the Cooperative may recommend such changes to the Bylaws, as it deems necessary or desirable. Amendment to the Bylaws may be made by the TASB Board of Trustees after notice of the proposed amendments has been mailed to the members of the TASB Board of Trustees at least ten (10) days prior to the day of the meeting to consider same.

Council Agenda Item: #2d

SUMMARY:
Consideration of a resolution authorizing the City Manager to enter into an advertising contract with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives.

FINANCIAL IMPACT:
Budgeted Amount: $172,000

Cost:

1. $15,000 per month for Krause's services

2. Any outside suppliers engaged by Krause on behalf of the Town will be invoiced by Krause and billed to the Town with a 17.65% mark-up.

3. Town will reimburse at cost any services such as courier, freight, postage, long distance or similar expenditures incurred for Town.

BACKGROUND:
In July 2003 staff solicited proposals from area advertising firms to provide creative and marketing services to the Town. As a result of that process, Krause Advertising was selected to provide creative and marketing services for the Town. The terms of the agreement were for a two-year period with an option to renew for an additional two years. The agreement also provided that should new events be created or a significant change in the proposed marketing initiatives occurs, either party had the opportunity to review the fee structure. The proposed fee reflects the marketing initiatives for the 2005-2006 year.

Staff has been very pleased with Krause's work and their ability to address the variety of events and the other marketing elements that comprise the Town's marketing program. Those efforts have also been publicly recognized when the Town received several of the coveted IFEA (International Festival and Events Association) awards for the TASTE collateral.

The new fee will be effective January 1. The total cost for Krause's services for a 12-month period October 2004 to September 2005 is $172,000.

RECOMMENDATION:
Staff recommends approval.

KRAUSE

Exhibit A
Town of Addison
Krause Creative for FY 2005

Project	Account Mgmt/Creative Services
Addison Direct (revise 2 versions of hotel vouchers)	$ 3,000
Hotel Advertising (update ad and prepare publication materials)	$ 1,500
Restaurant (creation of 10 new ads; production of 25 DMN ads)	$88,000
Restaurant (5 other pubs)	$ 3,500
Collateral (Update hotel brochure, restaurant brochure and tear-off map version)	$15,000
North Texas Jazz Festival (print ad, mailer, flier, program)	$15,000
Taste Addison (print ad, flier, poster, radio/tv copy, brochure cover, center spread and map, t-shirt design, free admission tickets, lanyards, invitations)	$22,000
Thursday Taste Addison Event (name, logo, direct mail piece, list consultation)	
Summer Events Rack Brochure	$ 4,000
Kaboom Town! (print ad, flier)	$ 4,000
Addison Oktoberfest (print ad, flier, poster, coaster, radio/tv copy, brochure cover, center spread and map, t-shirt design, free admission tickets, lanyards, invitations)	$22,000
July Jazz (print ad, flier)	$ 1,000
Bookworm Bash (print ad, flier)	$ 1,000
Arbor Day (print ad, flier)	$0
Total	$180,000/12 months = $15,000/month

STATE OF TEXAS §
§
COUNTY OF DALLAS §

ADVERTISING AGREEMENT

This Advertising Agreement ("Agreement") is made as of _____, 2005 by and between the Town of Addison, Texas (the "Town") and Krause Advertising ("Krause").

WHEREAS, the Town is a Texas home rule municipality operating under and pursuant to article 11, section 5 of the Texas Constitution, the laws of the State of Texas, and its Home Rule Charter; and

WHEREAS, Krause is is a corporation doing business in the State of Texas; and

WHEREAS, the Town and Krause desire to enter into this Agreement setting forth the terms and conditions under which Krause will provide to the Town advertising services on a non-exclusive basis.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Krause Advertising do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.

2. Term. Subject to the earlier termination of this Agreement as provided for herein and subject to the annual appropriation of funds by the Town to make payments under this Agreement, this Agreement shall be in effect for a period of two (2) years, beginning on January 1, 2005 and ending on December 31, 2006. If funds to make any payment or payments under this Agreement during the said Term are not appropriated by the Town, this Agreement shall terminate.

3. Services. Krause shall provide to the Town, and to the Town's satisfaction, advertising services in any and all fields of advertising (the "Services") as the Town may request from time to time, in the Town's sole discretion and including, without limitation, the items outlined in Exhibit A (entitled "Krause Creative for FY 2005") attached hereto and incorporated herein. In connection with the provision of such Services, Krause shall comply with all applicable federal, state and local laws, rules and regulations.

4. Compensation. For the Services provided by Krause, the Town shall pay Krause in accordance with the following:

(a) A monthly fee of $15,000 ("Monthly Fee"), which will cover all internal agency labor in performance of account service, marketing consultation, creative ad production services, administrative and account oversight. This Monthly Fee is based on the initiatives as outlined in the Town's marketing and special events agendas as outlined in the attached Exhibit A. In the event a new event be created or a significant increase in the marketing budget occur, both parties may discuss adjusting the fee accordingly.

(b) All scans, photography, illustration, printing, and any other outside suppliers engaged by Krause on the Town's behalf and with the Town's prior consent will be invoiced to Krause and billed to the Town with an effective 17.65% mark-up in accordance with the terms hereof.

(c) Krause will receive reimbursement at cost for outlays made by Krause for courier, freight, postage, long distance and similar expenditures incurred by Krause for the Town in accordance with the terms hereof.

5. Billing.

(a) Krause shall submit to the Town, on the last day of each month during the Term hereof and beginning with January 31, 2005, an invoice for the Monthly Fee.

(b) Krause shall submit to the Town, on or before the fifth day of each month, a detailed statement in writing of all costs and expenses authorized pursuant to this Agreement and incurred by Krause during the immediately preceding month (the first such statement, for the month of January, 2005, being due on or before February 5, 2005, and the last such statement due on or before January 5, 2007).

(c) Each such invoice and statement shall include (i) a description of the work performed for the month preceding the date of the invoice and statement, (ii) time reports for that month for all Krause personnel who work under this Agreement, (iii) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice and statement, and (iv) any such additional documents or materials as the Town may request in connection with the invoice and statement and/or the compensation paid to Krause.

(d) The Town shall pay the Monthly Fee set forth in the invoice and all costs and expenses properly incurred by Krause and set forth in the statement within thirty (30) days following the Town's receipt of the invoice and statement.

(e) The obligations of the parties extending into January, 2007 shall survive the expiration of this Agreement.

6. Termination.

(a) *Without cause.* Either party may terminate this Agreement at any time and for any reason by giving to the other party at least 90 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by Krause shall be and become the property of the Town, and Krause shall promptly deliver such items to the Town. Krause shall be paid for all work satisfactorily completed prior to the effective date of said termination.

(b) *With cause*. If Krause, Krause's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the Town, then Town shall have the right to terminate this Agreement effective

immediately upon the Town giving written notice thereof to Krause. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by Krause shall be and become the property of the Town and Krause shall promptly deliver such items to the Town. Krause shall be paid for all work satisfactorily completed prior to the effective date of such termination.

7. Entire Agreement and Modification. This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. Krause shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Krause specifically acknowledges that in entering into and executing this Agreement, it relies solely upon the provisions contained in this Agreement and no others.

8. Assignment. Inasmuch as this Agreement is intended to secure the specialized services of Krause, Krause has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of Town, and any such assignment, transfer, delegation, subcontract or other conveyance without the Town's prior written consent shall be considered null and void.

9. Applicable Law; Venue. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

10. Enforceability. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

11. Independent Contractor. Krause shall, during the entire term of the Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the Town to exercise discretion or control over the professional manner in which Krause performs the services which are the subject matter of the Agreement; provided, however, that the Services to be provided by Krause shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

12. Insurance; Indemnity.

(a) Krause, at its own expense, shall purchase, maintain and keep in force such insurance as described and in the minimum amounts set forth below:

(i) Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $1,000,000 each occurrence, which shall include coverages for bodily injury (including, without limitation, death) and property damage, and particularly for liability arising from premises operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability (including, without limitation, the liability assumed under the indemnity provisions of this Agreement). If such CGL insurance contains a general aggregate limit, it shall apply separately to the Work under this Agreement.

(ii) Commercial Automobile Liability insurance at minimum combined single limits of $1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned and hired car coverage.

(iii) Worker's compensation insurance through an insurance company licensed to do business in Texas or, if qualified by law, through self-insurance.

The above policies shall be endorsed to provide the following, as applicable: (i) in all liability policies, name the Town of Addison, Texas as an additional insured; (ii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted hereunder, and that insurance applies separately to each insured against whom claim is made or suit is brought; and (iii) a waiver of subrogation in favor of the Town of Addison must be included in all such policies. All insurance policies shall be issued by an insurance company with an A.M. Best's rating of not less than A- and authorized to do business in Texas and in the standard form approved by the Texas Department of Insurance, and shall be endorsed to provide for at least 30 days advance written notice to the Town of a material change in or cancellation of a policy. Certificates of insurance, satisfactory to the Town, evidencing all coverage above, shall be furnished to the Town prior to January 31, 2005, with complete copies of policies furnished to the Town upon request. The Town reserves the right to review and revise from time to time the types of insurance and limits of liability required herein.

(b) (i) KRAUSE AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH KRAUSE'S PERFORMANCE OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT), ANY BREACH OR DEFAULT IN THE PERFORMANCE OF KRAUSE'S OBLIGATIONS UNDER THIS AGREEMENT, AND WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF KRAUSE OR OF ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS

UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(ii) With respect to Krause's indemnity obligation set forth in subsection (i), Krause shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, or sole gross negligence of the Indemnitee, or sole conduct of the Indemnitee that may or does expose the Indemnitee to strict liability under any legal theory..

(iii) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, gross negligence, or conduct that may or does result in exposure to strict liability, of both Krause and the Indemnitee, Krause's indemnity obligation set forth in subsection (iii) will be limited to a fraction of the total Damages equivalent to Krause's own percentage of responsibility.

(iv) With respect to Krause's duty to defend set forth herein in subsection (i), Krause shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Krause and to reject Krause's selection of counsel and to select counsel of the Town's own choosing, in which instance, Krause shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Krause, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(v) In the event that Krause fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Krause, and Krause shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(vi) The defense, indemnity and hold harmless provisions and obligations set forth in this Agreement shall survive the expiration or termination of this Agreement.

13. Records.

(a) Krause shall keep complete and accurate records for the services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to Town upon request.

(b) Krause shall assure the confidentiality of any records that are required by law to be so maintained.

(c) Krause shall prepare and forward such additional or supplementary records as Town may reasonably request.

14. Notices. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To the Town:	To Krause:
Town of Addison	Krause Advertising
5300 Belt Line Road	5307 E. Mockingbird Lane
Dallas, Texas 75254	Suite 250
Attn: Lea Dunn	Dallas, Texas 75206

15. Findings Confidential. No reports, information, documents, or other materials given to or prepared by Krause under this Agreement which Town requests to be kept confidential shall be made available to any individual or organization by Krause without the prior written approval of Town. However, Krause shall be free to disclose such data as is publicly available.

16. Ownership of Reports. The reports, documents and materials prepared by Krause under this Agreement shall be the sole property of the Town upon payment by the Town to Krause for the fees earned under this Agreement in connection with the preparation and delivery of such reports, documents and materials.

17. Agreement Controlling. The Proposal is incorporated into this Agreement, except to the extent any such terms or provisions are in conflict with any term or provision of this Agreement, in which event the express terms and provisions of this Agreement shall control.

18. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

19. Survival. Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this Agreement shall survive the cancellation, expiration or termination of this Agreement. Obligations or either party hereunder arising prior to the termination or cancellation of this Agreement allocating responsibility or

liability of or between the Town and Krause shall survive the completion of this Services hereunder and termination or cancellation of this Agreement.

20. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the Town and Krause have executed this Agreement on the day and year first hereinabove set forth.

TOWN OF ADDISON, TEXAS	KRAUSE ADVERTISING
By:_____	By:_____
Ron Whitehead, Town Manager	Printed Name:_____
	Title:_____

Council Agenda Item: #2e

SUMMARY:

This item is to request Council approval to enter into an Interlocal Agreement with the City of Farmers Branch for the construction of an Emergency Water System Interconnection.

FINANCIAL IMPACT:

Budgeted Amount:	N/A
Cost:	Total cost not to exceed $20,000. Funds provided from Arapaho Road, Phase III Project
Funding Source:	Funds are available from the FY 2004 Bond Sale and from Unallocated Bond Fund Proceeds

BACKGROUND:

Construction of the Arapaho Road, Phase III project is underway and will continue into the fall of 2005. During the course of these improvements, it has been determined that the feed from an existing Dallas Water Utilities 60" water transmission main to the City of Farmers Branch must be temporarily shut down. This operation is a scheduled event that is in conjunction with the proposed lowering of the existing 60" main during construction of the Arapaho Road project. On January 10, 2005, the process of lowering the transmission main will begin, and the feed to Farmers Branch must be closed off a few days later. The closure will remain for up to two weeks. Farmers Branch has tested their system and they feel that they will be able to maintain adequate volume and pressure in the eastern portion of their water distribution system while the feed from the 60" main remains closed. However, water utilities staff from both municipalities feel that an interconnection between the respective water systems will provide a backup and an enhanced level of security in case of an emergency. An emergency could occur during the Arapaho Road construction or if either municipality experiences water system breaks, a serious fire, or natural disasters. In addition, a Vulnerability Assessment of the Town's water system has been performed with a recommendation that an interconnection be provided between Farmers Branch and Addison. Similar interconnections already exist between Carrollton and Addison, and Dallas and Addison. An interlocal agreement is being prepared by the Town of Addison City Attorney for review by Farmers Branch, which will include physical and legal components of the proposed interconnection.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into an Interlocal Agreement with the City of Farmers Branch for the construction of an Emergency Water System Interconnection, subject to approval by the City Attorney.

Council Agenda Item: #R3

SUMMARY:

Presentation of the Government Finance Officers Association (GFOA) "Certificate of Achievement for Excellence in Financial Reporting" to the Town of Addison for its Comprehensive Annual Financial Report (CAFR).

FINANCIAL IMPACT:

There is no financial impact associated with this item.

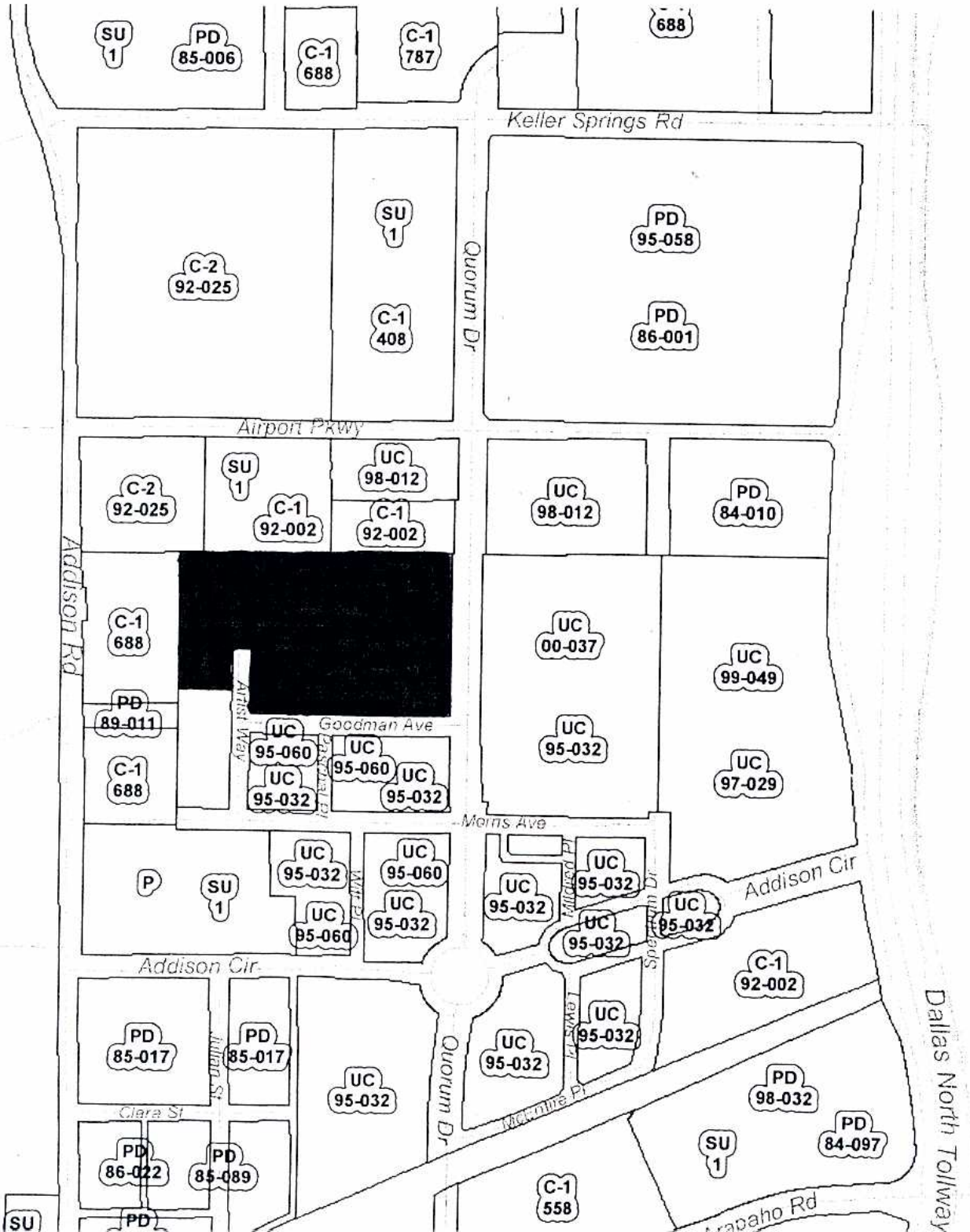
BACKGROUND:

The GFOA established the Certificate of Achievement for Excellence in Financial Reporting in 1945. This Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting. The purpose of the certificate program is to 1) recognize and encourage excellence in financial reporting by local governments, and 2) provide citizens, legislative bodies, and other decision makers with the best possible financial information.

The Town of Addison has received the Certificate of Achievement for Excellence in Financial Reporting every year since 1983. The GFOA has notified the Town that our CAFR will again receive this distinction for the fiscal year ending September 30, 2003.

1480-Z

Case 1480-Z/Fairfield Residential. Requesting approval of a concept plan for four tracts, and a preliminary development plan for one tract of land located in the UC, Urban Center, district on 9.919 acres at the northwest corner of Quorum Drive and Goodman Avenue, on application from Fairfield Residential, LLC, represented by Mr. Paul Johnston.



#R4-2

TOWN OF ADDISON

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

Addison 50!
50 YEARS OF FUN!

December 13, 2004

STAFF REPORT

RE:	Case 1480-Z/Fairfield Residential, LLC
LOCATION:	9.919 acres in the Residential Sub-district of Addison Circle, and located north of Morris Avenue, west of Quorum Drive, south of Airport Parkway, and east of Addison Road
REQUEST:	Approval of amendments to the concept plan for the residential sub-district of the UC district, and approval of preliminary development plans, with waivers, for a townhome/condominium project of 152 units on 1.83 acres.
APPLICANT:	Fairfield Residential, LLC, represented by Mr. Paul Johnston

DISCUSSION:

Background. Addison Circle is a development that was envisioned through a long-term planning process called Addison 2020. During that process, a group of Addison citizens determined that a neo-traditional, urban neighborhood, with mixed uses, would be a logical development direction for the Town. The Town worked for many months with Columbus Realty Trust on a set of development standards, which were codified into the Urban Center zoning district, a new zoning classification in the Addison Zoning Ordinance.

The "UC" Urban Center zoning classification was added to the zoning ordinance on May 3, 1995 through Ordinance 095-019. Columbus Realty, which later became Post Properties, constructed three phases of multi-family developments under the UC district regulations. Development plans for Phase I (460 residential units) were approved on

July 17, 1995 through Ordinance 095-032. Phase II (610 residential units, a 300,000 square foot office building, and six town homes) was approved on June 24, 1997 through Ordinance 097-029, and Phase III (264 residential units) was approved on March 9, 1999, through Ordinance 099-007. A condominium development (The Aventura) of 86 units was approved on November 9, 1999 through Ordinance 099-049. At this point, Addison Circle contains 1,330 residential units, approximately 340,000 square feet of Class A office space, and approximately 110,139 square feet of retail/restaurant space.

In July of 2000, Post Properties submitted a development plan for Phase IV in Addison Circle. That phase contained an additional 255 multi-family units and 7,986 square feet of retail space. It covered 3.27 acres at the northeast corner of Quorum Drive and Morris Avenue. The plan entailed some amendments to the Concept plan, and both the amendments and the development plan were approved on September 26, 2000 through Ordinance 000-037. However, later in 2000, Post Properties determined that it would not build any more units in Addison Circle and let its option to purchase additional pieces of land lapse.

The remaining land in Addison Circle was purchased by TexOK Properties, which then sold the two remaining large tracts in the residential sub-district to different developers. CityHomes, a subsidiary of Centex Homes, bought the property on the east side of Quorum Drive, between Quorum and Spectrum. CityHomes is now under construction on 183 townhome/condominium units.

The tract under discussion in this case is the remaining large tract on the west side of Quorum Drive. It was purchased by Fairfield Residential in 2003, and at this point Fairfield is seeking approval for an amendment to the Concept Plan for the district, and approval of a preliminary development plan for Tract 1.

CONCEPT PLAN

The UC district regulations required that an overall concept plan be approved for the UC district before individual developments could be constructed. An overall concept plan for the residential sub district was approved in July of 1995 (attached Exhibit 1). However, the Town realized in 1995 that the development of Addison Circle would take place over several years, and the concept plan would likely be amended many times. A separate concept plan was approved for the Commercial subdistrict in June of 1997. In 2000, Post Properties requested that the Concept Plan be amended to move the 0-6 park north and reconfigure it so it would run lengthwise against Quorum Drive. That amendment was approved, but as noted above, the project approved for Post Properties was never constructed. In 2003, CityHomes amended the concept plan again

to move the park again and re-align the streets. That amendment was approved through Ordinance 003-040, and the revised concept plan for the east side of Quorum Drive is attached (Exhibit 2).

At this point, Fairfield wants to amend the concept plan again for the west side of Quorum Drive in order to change the size of the park dedication and realign the streets. Fairfield would like to increase the size of the park from 1.43 acres to 1.57 acres. The Town does not want to buy the additional land from Fairfield, but will accept dedication of the additional .14 acres (6,098.4 square feet). The additional land increases the Town's development cost and maintenance costs in the future, but the Town is willing to make those additional expenditures in order to have a park that fits in with Fairfield's development scheme. Fairfield also wants to move the proposed R-1 Residential street away from the northern boundary of the district south to the northern edge of the proposed park. Staff feels that is a good move because it puts a street edge next to all sides of the park. Staff's experience with the parks in Addison Circle is that they work well when streets surround them. Streets on all sides help the parks be highly visible to all visitors and residents of the district, and the increased visibility gives the Town the best "bang for the buck", or more visual appeal to more people per development and maintenance dollar spent.

In summary, staff supports the two proposed amendments to the concept plan for the residential sub district. Those changes are: expanding the size of the park (O-7 on the plan) from 1.43 to 1.57 acres, and moving the R-1 Residential Street at the north property down to the northern edge of the Park boundary.

PRELIMINARY DEVELOPMENT PLAN

Fairfield Residential is requesting approval of a preliminary development plan for Tract 1. It is a 1.83-acre tract that is located at the northwest corner of the intersection of Goodman Avenue and Quorum Drive. This is not the last time the Commission and Council will see this plan. Fairfield will still need to return to the P&Z and Council with a final development plan. However, this is a good first step at which many of the major elements of the plan (such as unit count, street lay-out, and park space) can be resolved. Other elements, such as exterior facades, can be discussed at this stage with input given to Fairfield for final development plans.

Fairfield is proposing a "hybrid" building. It has three types of units: townhomes, flat or one-story condominiums, and loft, or two-story units. While the combination of unit types makes for an interesting building, it causes it to not fit neatly into any of the UC district categories for dimensional and design standards. The design standards anticipated a townhome product that was similar to the product currently being built by CityHomes, not a townhome/condominium in a high-rise building, so the design

standards for a townhome don't fit the townhomes the applicant is proposing. Paul Johnston or Fairfield Residential (letter attached as Exhibit 3), notes the difference in the standards in his letter. The staff agrees with Mr. Johnston that the standards for a townhome are not intended for the type of product Fairfield is proposing, so the entire building will be measured against the ordinance using the Multifamily use standards. Therefore, Variance request 2 and Variance request 3 in Mr. Johnston's letter are not necessary.

DESIGN STANDARDS

The project does not propose any retail uses. The following standards are contained within the residential subdistrict of the "UC" Urban Center regulations:

Section 2. Use Regulations. The plans show a development that is 100% residential, which meets the use requirements.

Section 3. Dimensional and Design Standards
Subsection A, *Lot Dimensions.*
The minimum lot width dimension for a multi-family use is 200 feet. The minimum lot depth dimension for a multi-family use is 200 feet. The proposed building meets both of those standards.

Subsection B, *Intensity of use*
1. Maximum lot coverage
The maximum lot coverage for a multifamily use shall be 85%. As Mr. Johnston notes in his letter (Exhibit 3) under Variance 1, this development proposes to cover 92% of the lot. Mr. Johnston notes that the amenity deck, which is on top of the podium parking structure, is treated as covered area, and that if it were treated like a courtyard, the development would be well under the minimum coverage. The ordinance counts what is on the ground plane as lot coverage, and in this case, the ground plane is covered with a parking garage. The amenity deck shown on the plan is approximately 15 feet above the ground and is visually available only to those people who live in this building.

One of the primary goals of the UC district regulations is to deliver housing products that work to build a neighborhood. A large component of the neighborhood feel is friendly, walkable streets. Staff feels that an important element of a walkable street is the feeling of safety that comes from walking past lighted, occupied spaces at street level. Staff has a real concern about how this podium building, which sits atop a grade-level parking garage, connects to the street on the south, west, and north sides. Those elevations are all parking

garage and appear very fortress-like. Although the applicant has made an attempt to screen the garage, there are still no real entrances or stoops, or any devices that connect this building to the street. Staff would like to work with the applicant on a revised plan that better connects this building to the street and the adjacent park. However, at this point, staff does not support the request for a waiver to the lot coverage standard.

Subsection C. *Minimum area per dwelling unit*
The minimum area per dwelling unit shall be 800 square feet. Mr. Johnston notes in his letter that the units easily meet the multifamily minimum area. In fact the smallest unit is 843 square feet, and there are only 17 of those. The other units range from 1,035 up to 2,303 square feet. Almost half (42%) of the units are 2 bedroom/den units that range from 1,301 to 1,364 square feet. As staff noted previously, this building works like a multi-family building and will be measured by that standard. Therefore, all units exceed the minimum required square footage.

Subsection D. *Building heights.*
The minimum height for a multifamily building is 40 feet. The maximum height is 92 feet. This building is 75 feet tall, which is within the standards.

Subsection E, Paragraph 7. *Patios*
The ordinance provides that patios may not be constructed within the required setback zone. The applicant is proposing some pedestrian stoops along Quorum Drive, and those will project into the setback for a small distance. The staff is comfortable with the projecting stoops, and recommends approval of the waiver to the design standards to allow for them.

Subsection H. *Parking.*
The parking standards for all types of residential uses in the district require one off-street parking space per bedroom up to a maximum of two spaces per unit. According to the staff's calculations, the building will require a minimum of 203 spaces. Although the plans list the total amount of square footage dedicated to the parking levels, the staff did not find the number of actual parking spaces listed. The applicant will need to clarify how many spaces are provided in the final development plan. In addition, the staff would recommend additional spaces to be used for visitors and for couples who are living in a one-bedroom unit, but have two cars.

Subsection J., Paragraph 1 (a) *Exterior appearance.*
Fairfield is requesting a waiver of design standards for the exterior elevations. Under the ordinance, all exterior elevations, which face a public street, must be

90% brick. The applicant submitted exterior elevations for a building that is 90% brick on the first five floors, but is stucco on the top two levels, which are the loft units. The loft units are set back from the front of the building in order to provide generous patio areas, however, they count just like the bottom floors, and therefore the building does not meet the 90% requirement.

Staff does not hold the 90% rule as a hard and fast standard, but tries to make sure that the buildings being built in Addison Circle are consistent with the style and quality standard that has been set in the district up to this point. Staff does not have a concern with stucco, but does have concerns about these elevations. As noted previously, staff is concerned with the way the building meets the ground. Staff is also concerned about these elevations. The building has a very contemporary "pueblo" style, and it may indeed be a very attractive building, but the elevations look almost industrial in nature, and the staff believes the architecture being proposed is too big a disconnect from the other architecture in the district. Many members of the Commission and Council will remember the many sessions the staff had with the CityHomes developers to arrive at a design solution for the exterior of their product that both the developer and the Town could be proud of. Staff would like to work with Fairfield on some modifications to these proposed elevations that would help this unique and interesting building look more at home in Addison Circle. At this point, the staff does not recommend approving a waiver of design standards to the 90% brick requirement.

Subsection J., Paragraph 2 (a) *Colors.*
Colors. The colors for the buildings have not been definitely determined at this stage, but the applicant should be aware that the ordinance requires the dominant color of all buildings and roofs to be warm gray, red, beige, and/or brown. Black and stark white shall not be used.

Subsection K. *Landscaping Requirements.* Since this is a preliminary development plan, detailed landscape plans were not submitted. However, the applicant has shown some details that indicate Fairfield plans to follow the standards contained in the UC district. Slade Strickland notes in his memo that the applicant will be required to follow the UC district standards, with the exception of the tree fencing shown on the tree pit plans. It has been eliminated due to the high level of repair and maintenance it required. The applicant will need to supply final landscaping plans on all streets at the final development plan stage.

The Addison Circle Master Facilities agreement, which provided city funding for various elements in the district, calls for the applicant to dedicate a 1.43-acre

park to the city. Once the land for the park is dedicated, the Town will fund all improvements for the park. The Town and developer have already agreed on a landscape architecture firm to design the park. A team, consisting of members from the Town staff and developer's firm, will approval a concept and final development plan for the park, and then determine timing for construction.

Fire Code Requirements. The Fire Prevention Chief has reviewed the plans, and notes the following:

> -The proposed street north of the development shows a 23-foot wide drive lane. This width must be a minimum of 24 feet.
>
> Fire hydrant locations are not shown on the plan. Current codes call for a hydrant every 300 feet along the length of streets or fire lanes. Placing a hydrant on each of the four corners surrounding the property will satisfy this requirement.
>
> -Information on the submittal seems to indicate this building will meet the criteria of a high-rise building. As such, it will be subject to the provisions of Section 403 of the Building Code.
>
> -As with past proposal of this type at Addison Circle, I am strongly recommending the installation of a loading dock and service elevator for this property. The dense nature of the development makes it difficult for moving vans, delivery trucks, and service vehicles to park without blocking emergency vehicle access.

The staff has discussed the Fire Department's last comment with Gordon Robbins, Deputy Fire Chief, and Chief Noel Padden. The staff expects that trucks in the street will be less of a problem on these streets that it has been on Quorum Drive and Addison Circle because most of the trucks parked in the streets are service vehicles delivering to the retailers and restaurants. There are also moving vans parked in the streets, but not on a daily basis. Since there are no retail uses in this phase, there will be less delivery trucks. The staff has looked at how a full loading dock could be accommodated in this building, and doesn't see how the building can be re-designed to accommodate a dock without leaving a big hole in the building at street level. The staff already has concerns about how the building meets the ground, and it does not want to create another non-friendly hole at street level. In addition, there has to be a large turning radius and driveway length to accommodate a loading dock, and staff does not see how the streets could accommodate the turning radius that would be needed.

The staff has looked at creating a loading/unloading lane on the west side of the building between the building and the mews street. Trucks could pull off of the street into a paved area and unload from there. A location on the west side of the building would work best because that is the open end of the "U" shape for the building. The staff believes there is a workable solution for the loading and unloading of moving vans, and would like to work with the applicant toward that solution.

Engineering. Steve Chutchian in, the Public Works Department (memo attached), has reviewed the plans and he has the following comments:

-The plans should address how Tract I and the remaining tracts will be provided sanitary sewer service.

-The proposed improvements to the median area within Quorum Drive are not shown correctly.

-A grading and drainage plan will be necessary for Tract I and the overall addition.

-The development plan does not address on-site storm water detention requirements by ordinance.

-Landscaping, irrigation and other streetscape development along the west side of Quorum Drive are not adequately shown on the plan and responsibility for performing the improvements must be finalized.

-Water and storm drainage facilities within Artist Way and the west end of Goodman Avenue are drawn as proposed improvements. However, these improvements are beyond the limits of Tract I. The affected sections of roadway appear to have sufficient need for street reconstruction, in accordance with the development plan layout. Some proposed utilities may be relocated onto the proposed park property to reduce the impact on the existing street pavement.

-Existing drainage swale along the west end of the addition must be placed underground and be tied into the proposed storm drainage facilities on Artist Way.

-Engineer must provide written proof that plans and specifications have been submitted and approved by the Texas Department of Licensing and

Regulations for compliance with the Americans with Disabilities Act. (ADA).

Building Code. Lynn Chandler, the Building Official, has examined the plans, and he notes the following:

-All construction shall comply with the 2000 IBC, IPC, IMC, IECC, IFC, and 2002 NEC.

-The building shall be sprinklered throughout, including the parking garage.

-The provisions of Section 403, High-Rise Buildings, of the 2000 IBC shall apply if the building has an occupied floor located more than 75 feet above the lowest level of fire department vehicle access.

SUMMARY

The staff is pleased to have additional "for sale" product proposed for Addison Circle. This is the first submittal by the applicant, and the staff believes there are several items that need to be worked through. However, staff is very pleased with the density of the development and the variety of housing types being offered.

As the staff noted, this is a preliminary development plan, not a final plan. This has been a good first step through which a lot of the elements of the design have been resolved. The staff is satisfied with the lay-out of the plan and believes that it adequately addresses traffic flow and emergency access. However, as discussed earlier, the staff believes that the elevations for the building could be improved, and that the connection between the building and the street, on all elevations except Quorum Drive, could be improved.

RECOMMENDATION

Staff recommends approval of the amendments to the concept plan as follows:

-Expand the size of the park (O-7 on the plan) from 1.43 to 1.57 acres,

-Move the R-1 Residential Street at the north property down to the northern edge of the Park boundary.

Staff recommends approval of the proposed preliminary development plan with the following waivers to design standards, as requested by the applicant:

Waiver 1 – *Maximum Lot Coverage 85% for Multifamily Use and Maximum Lot Coverage 65A% for Townhouse/Condominium*

Staff does not recommend approval of this waiver. Staff would like to work with the applicant on revising the elevations so that there is a better connection between the building and the street.

Waiver 2 – *Minimum are per dwelling unit for Townhouse/Condominium 1,600 square feet.*

Staff has measured this project by the multifamily guidelines. Waiver is not necessary.

Waiver 3 – *Minimum height of 24 feet and maximum height of 42 feet for Townhouse Condominium*

Again, staff has measured this project by the multifamily guidelines. Waiver is not necessary.

Waiver 4 – *Patios may not be constructed within the required setback zones. This limitation, however, does not apply to sidewalk cafes.*

Staff recommends approval for this waiver.

Waiver 5 (a) – *At least 90 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) shall be brick construction. . .*

Staff does not recommend approval for this waiver. Staff would like to work with the applicant on revised elevations.

Staff recommends approval of the site plans submitted by the applicant, but not the elevations. Staff recommends approval of the site plan subject to the following conditions:

-The applicant will be required to follow the UC district standards, with the exception of the tree fencing shown on the tree pit plans.

-The proposed street north of the development shows a 23-foot wide drive lane. This width must be a minimum of 24 feet.

-Fire hydrant locations are not shown on the plan. Current codes call for a hydrant every 300 feet along the length of streets or fire lanes. Placing a hydrant on each of the four corners surrounding the property will satisfy this requirement.

-Information on the submittal seems to indicate this building will meet the criteria of a high-rise building. As such, it will be subject to the provisions of Section 403 of the Building Code.

-The plans should address how Tract I and the remaining tracts will be provided sanitary sewer service.

-The proposed improvements to the median area within Quorum Drive are not shown correctly.

-A grading and drainage plan will be necessary for Tract I and the overall addition.

-The development plan does not address on-site storm water detention requirements by ordinance.

-Landscaping, irrigation and other streetscape development along the west side of Quorum Drive are not adequately shown on the plan and responsibility for performing the improvements must be finalized.

-Water and storm drainage facilities within Artist Way and the west end of Goodman Avenue are drawn as proposed improvements. However, these improvements are beyond the limits of Tract I. The effected sections of roadway appear to have sufficient need for street reconstruction, in accordance with the development plan layout. Some proposed utilities may be relocated onto the proposed park property to reduce the impact on the existing street pavement.

-Existing drainage swale along the west end of the addition must be placed underground and be tied into the proposed storm drainage facilities on Artist Way.

-Engineer must provide written proof that plans and specifications have been submitted and approved by the Texas Department of Licensing and Regulations for compliance with the Americans with Disabilities Act. (ADA).

-All construction shall comply with the 2000 IBC, IPC, IMC, IECC, IFC. and 2002 NEC.

-The building shall be sprinklered throughout, including the parking garage.

-The provisions of Section 403, High-Rise Buildings, of the 2000 IBC shall apply if the building has an occupied floor located more than 75 feet above the lowest level of fire department vehicle access.

Respectfully submitted,

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on December 16, 2004, voted to recommend approval of the following:

Approval of the amendments to the concept plan as follows:

-Expand the size of the park (O-7 on the plan) from 1.43 to 1.57 acres,

-Move the R-1 Residential Street at the north property down to the northern edge of the Park boundary.

The Commission then tabled the request for approval of the preliminary development plan in order to give the applicant and staff time to work on revised elevations and provide a better connection between the park and the west façade of the building. The applicant will return to the Commission at a special hearing to be held on January 6, 2005.

Voting Aye: Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow
Voting Nay: None
Absent: Benjet

Memorandum

Date: December 8, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1480-Z/Fairfield Residential**

The applicant will be required to follow streetscape standards set forth in the UC zoning district regulations.

Staff recommends that the tree fencing shown on the tree pit plans be eliminated due to the high level of repair and maintenance they require.

Memorandum

To: Carmen Moran, Director of Development Services

From: Gordon C. Robbins, Deputy Fire Chief

Date: Wednesday, December 8, 2004

Re: Case 1480-Z / Fairfield Residential

Thank you for the opportunity to review this submittal. I have the following comments:

1. The proposed street north of the development shows a 23-foot wide drive lane. This width must be a minimum of 24-feet.

2. Fire hydrant locations are not shown on the plan. Current codes call for a hydrant every 300-feet along the length of streets or fire lanes. Placing a hydrant on each of the four corners surrounding the property will satisfy this requirement.

3. Information on the submittal seems to indicate this building will meet the criteria of a high-rise building. As such it will be subject to the provisions of Section 403 of the Building Code.

4. As with past proposals of this type at Addison Circle, I am strongly recommending the installation of a loading dock and service elevator for this property. The dense nature of the development makes it difficult for moving vans, delivery trucks and service vehicles to park without blocking emergency vehicle access. Please refer to the photographs below for examples of this problem at Addison Circle.

I look forward to continued discussion of this project. Please contact me if you have any questions.

Carmen Moran

From: Steve Chutchian
Sent: Friday, December 03, 2004 4:00 PM
To: Carmen Moran
Subject: FW: Addison Fairfield Residential Comments (Revised)

-----Original Message-----
From: Steve Chutchian
Sent: Friday, December 03, 2004 2:36 PM
To: Carmen Moran
Cc: Mike Murphy; Jim Pierce; Jenny Nicewander
Subject: Addison Fairfield Residential Comments

The following comments are submitted regarding the preliminary Development Plan for Addison Fairfield Residential:

- How will Tract I and the remaining tracts be provided sanitary sewer service.
- The proposed improvements to the median area within Quorum Drive is not shown correctly.
- A grading and drainage plan will be necessary for Tract I and the overall addition.
- The development plan does not address on-site storm water detention requirements by ordinance.
- Landscaping, irrigation and other streetscape development along the west side of Quorum Drive is not adequately shown on the plan and responsibility for performing the improvements must be finalized.
- Water and storm drainage facilities within Artist Way and the west end of Goodman Ave. are drawn as proposed improvements. However, these improvements are beyond the limits of Tract I. The affected sections of roadway appear to have sufficient need for street reconstruction, in accordance with the development plan layout. Some proposed utilities may be relocated onto the proposed park property to reduce the impact on the existing street pavement.
- Existing drainage swale along the west end of the addition must be placed underground and be tied into the proposed storm drainage facilities on Artist Way.
- Engineer must provide written proof that plans and specifications have been submitted and approved by the Texas Department of Licensing and Regulations for compliance with the Americans with Disabilities Act (ADA).

Should you have any questions, please let me know.

Steve Chutchian, P.E.
Assistant City Engineer

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 8, 2004

Subject: Case 1480-Z/Fairfield Residential

The applicant should be informed that the construction shall comply with but not limited to the following requirements:

1. All construction shall comply with the 2000 IBC, IPC, IMC, IECC, IFC, and 2002 NEC.

2. The building shall be sprinklered throughout including the parking garage.

3. The provisions of Section 403 High-Rise Buildings of the 2000 IBC shall apply if the building has an occupied floor located more than 75' above the lowest level of fire department vehicle access

EXHIBIT 1

VARIATIONS/ALTERATIONS:

REQUIREMENTS:
PURSUANT TO SECTION 13.8.N OF THE URBAN CENTER DISTRICT REGULATIONS, THE APPLICATION FOR CONCEPT PLAN APPROVAL INCLUDES THE FOLLOWING VARIATIONS AND ALTERATIONS FROM THE PROPOSED CONCEPT PLAN SUBMITTAL

1. MIX OF USES FOR SEPARATE PHASES.
2. FLOOR AREAS BY CATEGORY OF USE.
3. LOCATIONS OF PRIVATE RECREATION AREAS.
4. A DETAILED TIME SCHEDULE FOR PHASES AND ALTERNATIVE USES. THIS CONCEPT PLAN INCLUDES A GENERAL TIME SCHEDULE AND PHASING SEQUENCE FOR THE RESIDENTIAL SUBDISTRICT.
5. STREET ADDRESS, NAMES OF STREETS, STREET NUMBERING, FINAL LOCATION OF MEWS STREETS (SHOWN LOCATION FOR MEWS STREETS ARE PRELIMINARY ONLY), AND DETAILS REGARDING RIGHTS-OF-WAYS AND EASEMENTS TO BE ABANDONED.

GENERAL NOTES:

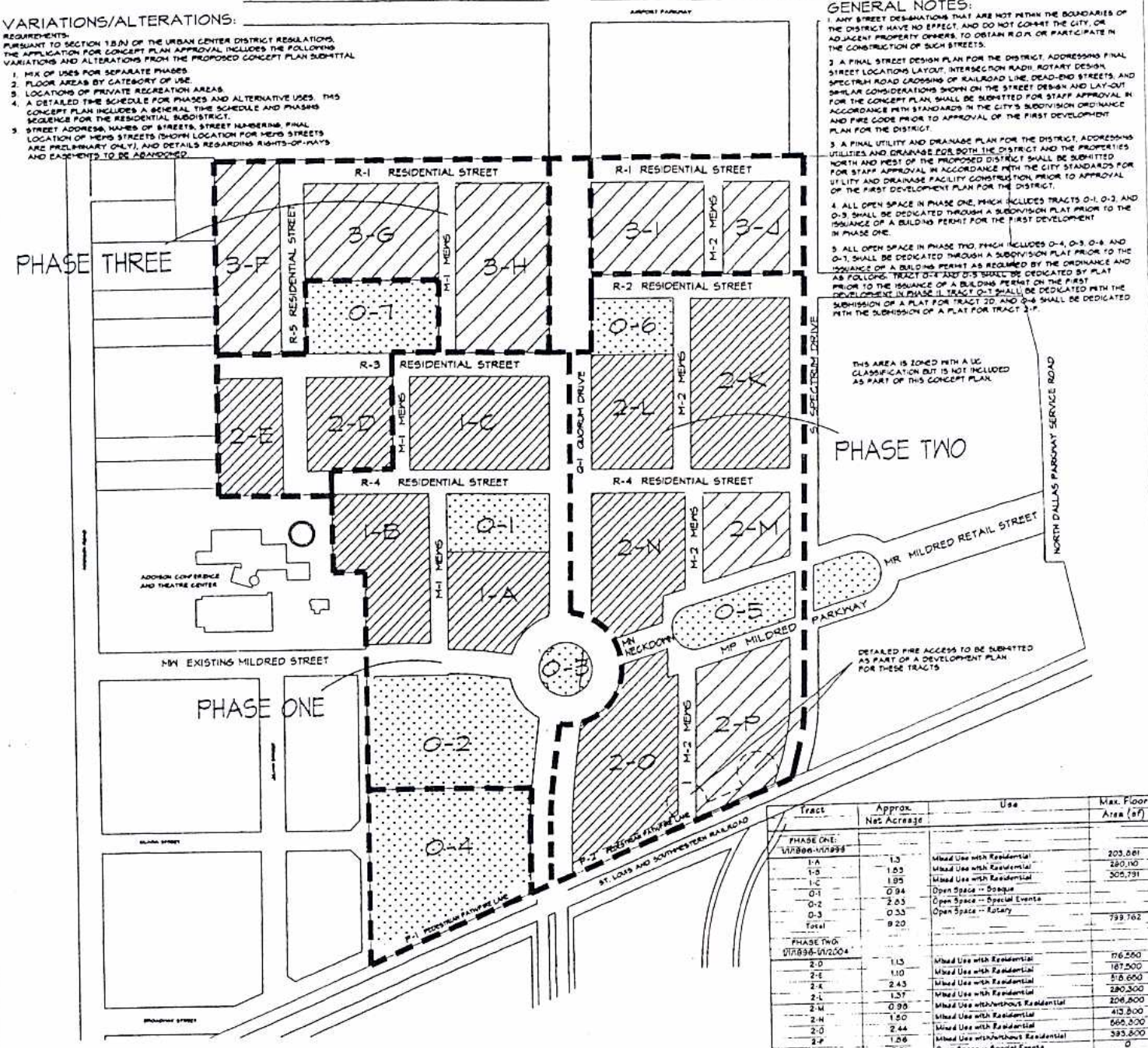
1. ANY STREET DESIGNATIONS THAT ARE NOT WITHIN THE BOUNDARIES OF THE DISTRICT HAVE NO EFFECT, AND DO NOT COMMIT THE CITY, OR ADJACENT PROPERTY OWNERS, TO OBTAIN R.O.W. OR PARTICIPATE IN THE CONSTRUCTION OF SUCH STREETS.

2. A FINAL STREET DESIGN PLAN FOR THE DISTRICT, ADDRESSING FINAL STREET LOCATIONS LAYOUT, INTERSECTION RADII, ROTARY DESIGN, SPECTRUM ROAD CROSSING OF RAILROAD LINE, DEAD-END STREETS, AND SIMILAR CONSIDERATIONS SHOWN ON THE STREET DESIGN AND LAY-OUT FOR THE CONCEPT PLAN, SHALL BE SUBMITTED FOR STAFF APPROVAL IN ACCORDANCE WITH STANDARDS IN THE CITY'S SUBDIVISION ORDINANCE AND FIRE CODE PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.

3. A FINAL UTILITY AND DRAINAGE PLAN FOR THE DISTRICT, ADDRESSING UTILITIES AND DRAINAGE FOR BOTH THE DISTRICT AND THE PROPERTIES NORTH AND WEST OF THE PROPOSED DISTRICT SHALL BE SUBMITTED FOR STAFF APPROVAL IN ACCORDANCE WITH THE CITY STANDARDS FOR UTILITY AND DRAINAGE FACILITY CONSTRUCTION, PRIOR TO APPROVAL OF THE FIRST DEVELOPMENT PLAN FOR THE DISTRICT.

4. ALL OPEN SPACE IN PHASE ONE, WHICH INCLUDES TRACTS O-1, O-2, AND O-3, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT FOR THE FIRST DEVELOPMENT IN PHASE ONE.

5. ALL OPEN SPACE IN PHASE TWO, WHICH INCLUDES O-4, O-5, O-6, AND O-7, SHALL BE DEDICATED THROUGH A SUBDIVISION PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT AS REQUIRED BY THE ORDINANCE AND AS FOLLOWS: TRACT O-4 AND O-5 SHALL BE DEDICATED BY PLAT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT IN PHASE II. TRACT O-7 SHALL BE DEDICATED WITH THE SUBMISSION OF A PLAT FOR TRACT 2D AND O-6 SHALL BE DEDICATED WITH THE SUBMISSION OF A PLAT FOR TRACT 2-F.



RESIDENTIAL SUBDISTRICT

RESIDENTIAL UNITS REQUIRED TO MEET THE 1500 UNIT MINIMUM SHALL BE DEVELOPED ON THOSE SITES DESIGNATED MIXED-USE RESIDENTIAL IN PHASES 1 AND 2.

MIXED USE WITH RESIDENTIAL
(RESIDENTIAL WITH NON-RESIDENTIAL GROUND FLOOR USES)

MIXED USE WITH RESIDENTIAL
ALTERNATIVE USE: MIXED USE WITHOUT RESIDENTIAL

PUBLIC OPEN SPACE

PUBLIC OPEN SPACE FOR EACH PHASE TO BE DEDICATED BY PLAT PRIOR THE ISSUANCE OF A BUILDING PERMIT ON THE FIRST DEVELOPMENT WITHIN THAT PHASE.

Tract	Approx. Net Acreage	Use	Max. Floor Area (sf)
PHASE ONE: 1/1/1996-1/1/1998			
1-A	1.3	Mixed Use with Residential	203,681
1-B	1.83	Mixed Use with Residential	280,110
1-C	1.85	Mixed Use with Residential	305,791
O-1	0.94	Open Space -- Bosque	
O-2	2.85	Open Space -- Special Events	
O-3	0.33	Open Space -- Rotary	
Total	9.20		789,782
PHASE TWO: 1/1/1998-1/1/2004			
2-D	1.13	Mixed Use with Residential	176,550
2-E	1.10	Mixed Use with Residential	187,500
2-K	2.43	Mixed Use with Residential	518,650
2-L	1.37	Mixed Use with Residential	280,300
2-M	0.98	Mixed Use with/without Residential	206,800
2-N	1.50	Mixed Use with Residential	413,800
2-O	2.44	Mixed Use with Residential	666,500
2-P	1.06	Mixed Use with/without Residential	585,600
O-4	5.31	Open Space -- Special Events	0
O-5	0.74	Open Space -- Mildred Parkway	0
O-6	0.68	Open Space -- Quorum East	0
O-7	1.45	Open Space -- Quorum West	0
Total	19.26		2,733,200
PHASE THREE: 1/1/1996-1/1/2006			
3-F	1.06	Mixed Use with/without Residential	284,000
3-G	1.95	Mixed Use with/without Residential	256,600
3-H	2.31	Mixed Use with/without Residential	361,800
3-I	1.51	Mixed Use with/without Residential	321,250
3-J	0.88	Mixed Use with/without Residential	186,750
Total	8.44		1,450,500
TOTAL GROSS	55.336	Gross FAR -- 1.750 to 1	4,706,503 Not to exceed

FAR/ALLOWABLE SQUARE FOOTAGE NOTES:

1. The total allowable floor area for the district shall not exceed a gross FAR of 1.75 : 1 (3.61 net)
2. No development plan shall be approved and no building permit shall be issued for any use exceeding the maximum square footage allowance for the designated sub-phases.
3. No development plan shall be approved and no building permit shall be issued for any individual parcel if that parcel would cause the total gross FAR of 1.75 : 1 for the district to be exceeded.
4. Total building square footage to be determined at building permit stage.
5. Final development plans for all phases and sub-phases designated on the concept plan shall be submitted by January 1, 2006.

This information is part of a May 30, 1995 amendment to an application for approval of a concept plan, originally submitted March 1, 1995. This sheet is part of a set of 4 plan sheets replacing the set submitted on the same date for Lots 11, 12, and 13 of Block A, Lots 5, 6, and 7 of Block D, a portion of Lot 1 of Block D, and Lot 3 and a portion of Lot 2 of Block F, all being part of Addison's Addition, and additional unplatted acreage all in the G.W. Fisher Survey, Abstract No. 482 in the Town of Addison, Dallas County, Texas. This plan is being submitted by Bryant Hall of Columbus Realty Trust, 15851 North Dallas Parkway suite 855, Dallas, Texas 75248 telephone: 387-1488.

095-032

CONCEPT PLAN

Scale: 1" = 100'

ADDISON

Addison Urban Center

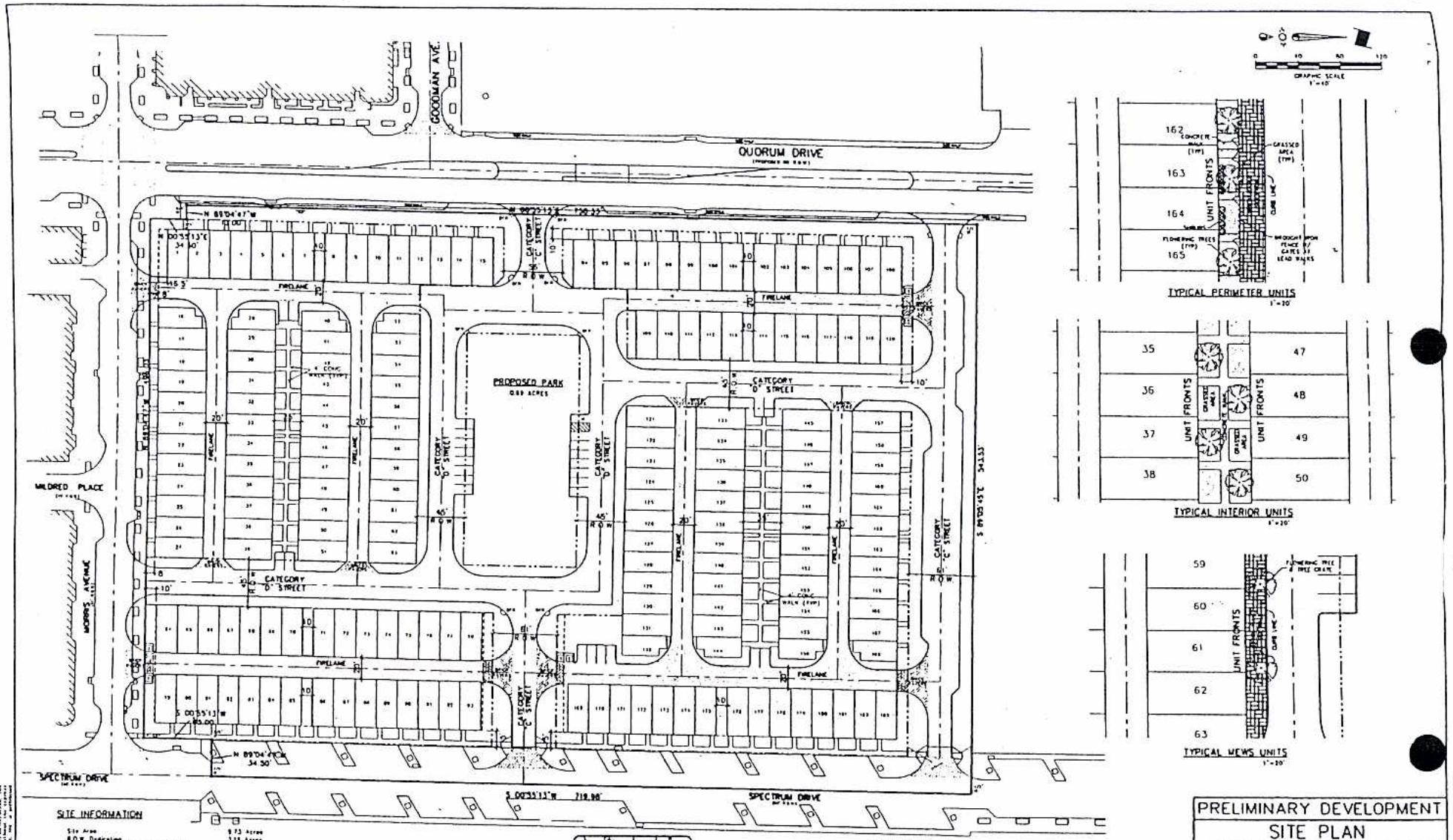
Special District Planning • Addison, Texas

COLUMBUS

RTKL Associates Inc.

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. 003-040



TYPICAL PERIMETER UNITS
1"=20'

TYPICAL INTERIOR UNITS
1"=20'

TYPICAL MEWS UNITS
1"=20'

SITE INFORMATION

Site Area	9.73 Acres
R.O.W. Dedication	3.15 Acres
Park Dedication (Public open space)	0.69 Acres
Private Open Space	0.29 Acres
Buildable Area	5.60 Acres
Townhouse Units	183 Units
- Smallest Unit	1850 Sq. Ft.
- Largest Unit	2250 Sq. Ft.
- Average Unit	1850 Sq. Ft. (may vary based on unit sizes)
Density	
- Gross	18.8 du/ac
- Net	32.7 du/ac
Total Floor Area	334,550 Sq. Ft. (may vary based on unit sizes)
Floor Area Ratio (net land area)	1.39
Off Street Parking Spaces	371
On Street Parking Spaces	128 (at shown-street construction may vary)

Location Map
NTS

PROPERTY OWNER:
TEXOK PROPERTIES, LP
2005 Faircloud Drive
Edmond, Oklahoma 75034
(972)888-8049

DEVELOPER:
CITYHOMES
3209 North Fitzhugh Avenue
Dallas, Texas 75204
(214)219-2900

PRELIMINARY DEVELOPMENT SITE PLAN

PARK VIEW AT ADDISON PLACE
TOWN OF ADDISON, TEXAS
COLLIN COUNTY

BROCKETTE DAVIS DRAKE, inc.
consulting engineers
Civil & Structural Engineering Surveying
4144 North Central Expressway, Suite 1100 Dallas,Texas 75204
(214)824-3647, fax (214) 824-7064

DESIGN	DRAWN	DATE	SCALE	NOTES	FILE	NO
RMJ	MDT	10/03	1"=40	800	C03226	11

EXHIBIT 3

November 18, 2004

Ms. Carmen Moran, AICP
Director of Development Services
Town of Addison
5300 Belt Line Road
Addison Texas 75001-9010

Re: Fairfield at Addison Circle
Variance requests

Dear Ms. Moran:

The attached application form and check for $500 is submitted with 15 sets of plans for Concept Plan and Preliminary Development Plan Review of Fairfield's site in Addison Circle. We have also included a list of potential variances that may be needed to achieve Fairfield's intended Phase I project.

VARIANCES REQUESTED FROM
ARTICLE XIX. UC URBAN CENTER DISTRICT REGULATIONS

VARIANCE 1

SECTION 3. DIMENSIONAL AND DESIGN STANDARDS; RESIDENTIAL SUBDISTRICT, B. Intensity of use.

Maximum Lot Coverage 85% for Multifamily Use and Maximum Lot Coverage 65% for Townhouse/Condominium

Under our current design for Phase I, the block surrounding the structure between Quorum Drive and the parkland has a lot coverage of 92%. This coverage amount has been dictated by our goal of providing a higher density product that comes out to the street and the provision of a pool and amenity deck on top of a podium parking structure. Under the definitions as we understand them, the amenity deck is treated as a "covered" area which is what puts us over the minimum lot coverage. If our amenity deck were allowed to be factored out and treated like a courtyard from a code standpoint, we would be well under the minimum coverage.

VARIANCE 2

SECTION 3. DIMENSIONAL AND DESIGN STANDARDS; RESIDENTIAL SUBDISTRICT, C. Minimum area per dwelling unit

Minimum area per dwelling unit for Townhouse/Condominium 1,600 square feet

This request is mainly for clarification. All of our units easily meet the multifamily minimum area per dwelling unit threshold, but we do plan on our first phase being condominiums. Its our believe that the 1,600 square feet minimum for Townhouse/Condominiums in the ordinance was intended for lower density townhouse and/or attached product and not for high density product such as

ours. We would like to request that we be allowed to follow the multi-family minimum area per dwelling unit.

VARIANCE 3

SECTION 3. DIMENSIONAL AND DESIGN STANDARDS; RESIDENTIAL SUBDISTRICT, D. Building heights.

Minimum height of 24 feet and maximum height of 42 feet for Townhouse Condominium.

As with the last item, all of our units easily meet the multifamily standards for this section and we are asking to be allowed to follow the multi-family minimum and maximum height.

VARIANCE 4

SECTION 3. DIMENSIONAL AND DESIGN STANDARDS; RESIDENTIAL SUBDISTRICT, E. Setbacks, 7. Patios.

Patios may not be constructed within the required setback zones. This limitation, however, does not apply to sidewalk cafes.

We are anticipating having some pedestrian stoops along Quorum Drive project into the setback for a very small distance. We would like to have the ability to construct these in order to allow more openings out onto the street edge and to help break up the elevation at the pedestrian level.

VARIANCE 5

SECTION 3. DIMENSIONAL AND DESIGN STANDARDS; RESIDENTIAL SUBDISTRICT, J. Exterior appearance. 1. Materials

(a) At least 90 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) shall be brick construction. An applicant, however may submit a design for construction of parking structures that employs alternative construction materials for exterior cladding with an application for a development plan. The alternative may be approved by the city upon determination that such construction will result in an appearance that is compatible with surrounding buildings and the overall character of the district. Upon a finding that the alternative design for parking structures will result in an appearance that is compatible with surrounding buildings and the overall character of the district, waivers may be granted for alternatives employing a minimum of 40 percent brick cladding, provided that the ground floor of the structure (up to a height of 12 feet), is at least 90 percent brick.

We are requesting a variance from the requirement that 90 percent of the entire exterior walls must be brick. The structure we are submitting is seven stories in height and the first five floors meet the 90% brick requirement, as does the entirety of the parking structure. The top two floors consist of masonry products but are primarily of a stucco finish. So in summary, the first five floors and the parking structure meet the standard, the only variation is the top two floors. We feel this allows us to break up the elevation from a design standpoint with another building material while still providing a predominately brick structure and providing a completely brick structure at the lower levels.

Should you find this letter incomplete in any way or have questions of its contents, please don't hesitate to call me at 817-307-8060 if you have any questions.

Sincerely,

Fairfield Residential

Paul R. Johnston

Attachments: 1) Application Form
2) Fee Check
3) Concept Plan
4) Preliminary Development Plans

cc: David Meyers—Huitt Zollars
Barry Howard--- Fairfield Residential

#R5-1

MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT
ME 2005-1

Date: December 28, 2004 Business: Charter Furniture
Location of Request: 15101 Midawy Rd

Ordinance Requirement	Request	Variance
Sec. 62-162 Premises Sign (C) There shall be only one sign for each façade for each tenant. Sec. 62-163. Area. Total effective area of attached signs shall not exceed the following schedules: (1) On an attached sign located at a height of up to 36 ft, the effective area is limited to 1 sq ft of sign area for each linear foot of building frontage not to exceed 100 sq ft (2) An attached sign located at or exceeding a height of 36 ft shall be permitted an increase in maximum effective area. Such increases shall not exceed 4 sq ft in effective area for each additional 1 ft of height above 36 ft measured from the base of the sign to the building grade. (3) Attached signs may be located on each façade; however, the sum of the effective area of all attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. (4) Building with 4 or more stories in height may have not more than 2 attached signs per façade provided that: a. Each sign is designated for a separate tenant. b. One sign must be located on or near the uppermost story of the building while the 2nd sign is to be located on the 1st or ground level floor. c. Signs may be no closer than 30 ft apart. d. The combined effective sq footage of both signs may not exceed twice the allowed effective sq footage as specified in subsections (1) and (2) of this section. (5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule: Sign Height (feet) / Maximum Letter/Logo Height (inches) 0 - 36 : 16 37 - 48 : 36 49 - 100 : 48 101 - 150 : 60 151 and up : 7 a. Letter heights in excess of 72 inches must be approved by the city council. b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height. (6) Copy on awnings is allowed in accordance with the above regulations for area and letter height. For back-lit awnings, the area of the sign shall be based on the area of the awning that is back-lit or illuminated.	The applicant is requesting: Four signs on the east façade as follows; 1.One sign approximately 65 sq ft in area. 2. One sign approximately 10 sq ft in area. 3. One sign approximately 16 sq ft in area. 4. One sign approximately 12 sq ft in area.	The ordinance allows: 1. Only one sign per façade per tenant with a maximum square footage of 100 sq ft.

STAFF RECOMMENDATION: These signs will be located approximately 85 feet from Midway Rd. The façade is 160 ft long, the approximate total square footage of all four signs is 103 sq ft, and the new Midawy bridge will partially obstruct the view of the building when traveling south on Midawy Rd. Therefore staff recommends approval.

STAFF: Lynn Chandler
Lynn Chandler, Building Official

#R5-2

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: _____ Filing Fee: $200.00

Applicant: Charter Furniture

Address: 15101 Midway Suite#: _____

Addison TX 75001 Phone#: 972-385-0621
City State Zip

Fax#: _____

Status of Applicant: Owner _____ Tenant _____ Agent _____

Location where exception is requested:

_____

Reasons for Meritorious Exception:

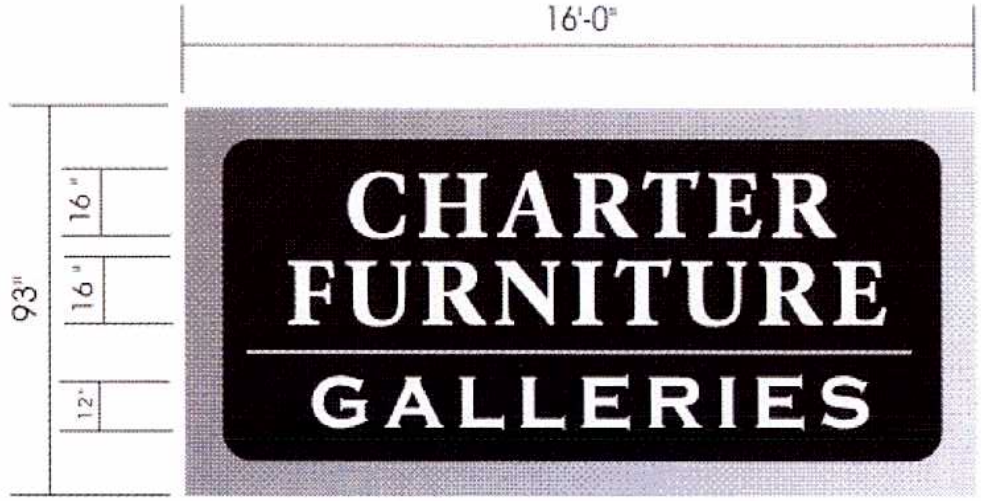
This building is 600' has 160' frontage. The 100' Maximum Sign Area. is Not Adequate For this size building to State the Name of the store AND the Services & Mdse Provided. The current sign is broken and must be replaced - with the "Charter Bridge under construction AND our Customers Coming From the North we must have Adequate Visability to be Competitive.

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

1. Lot Lines
2. Names of Adjacent Streets
3. Location of Existing Buildings
4. Existing Signs
5. Proposed Signs
6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid 12-17-04 Check # 2353 Receipt # 21143



CHARTER: 16" LTRS. 10' SPAN. 14 SQ. FT.

FURNITURE: 16" LTRS. 12' SPAN. 16 SQ. FT.

GALLERIES: 12" LTRS. 11' SPAN. 11 SQ. FT.

HOME: 16" LTRS. 5'-7" SPAN. 8 SQ. FT.

ACCENTS: 16" LTRS. 8'-3" SPAN. 11 SQ. FT.

OFFICE: 16" LTRS. 6'-6" SPAN. 9 SQ. FT.

69 TOTAL SQ. FT.

SCALE: 1/4"=1'-0"

BSC BAKER SIGN COMPANY

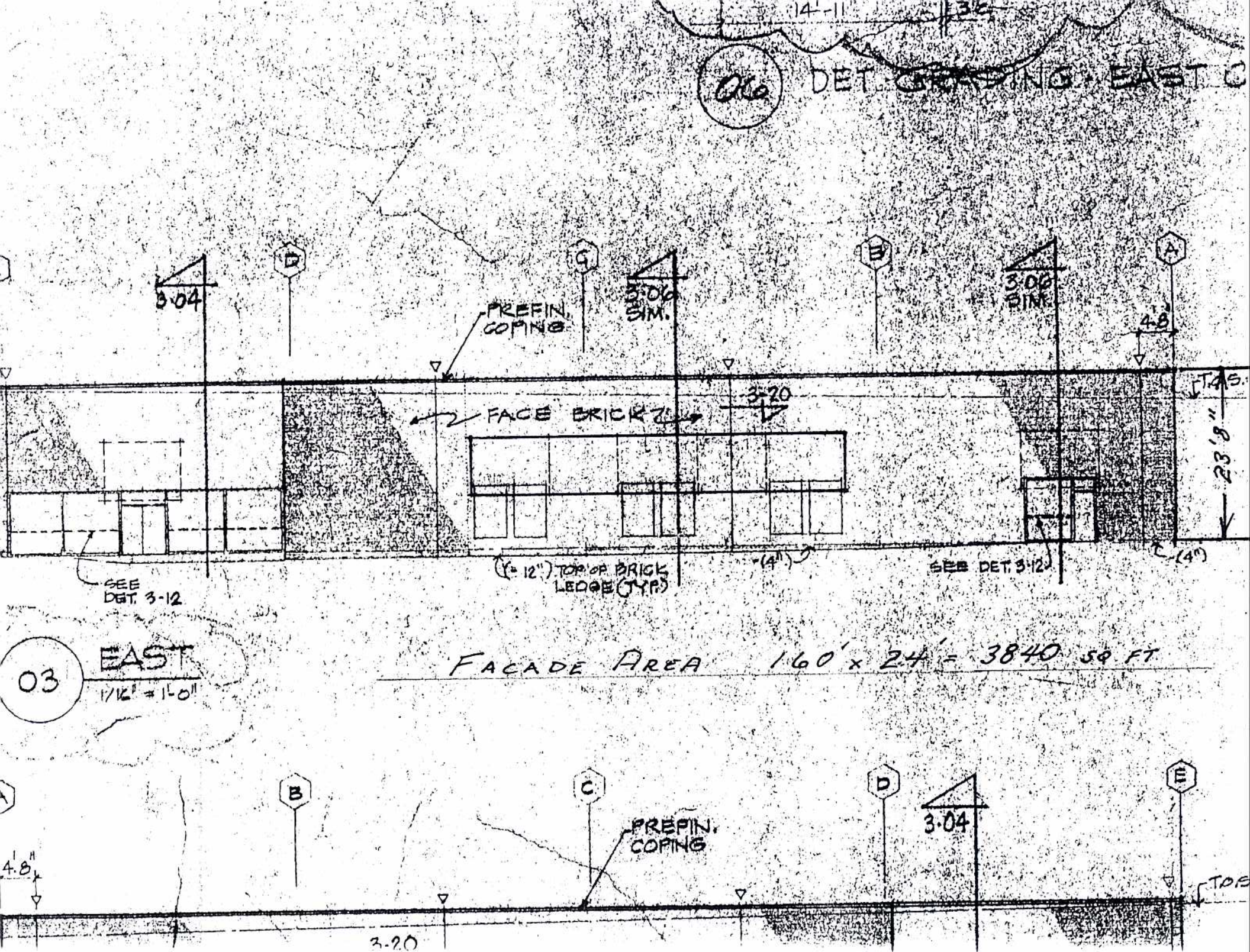
5213 SUN VALLEY DR. FT. WORTH, TX. 76119

Phone# 817-572-7346 FAX# 817-483-0839

Created for the approval of: Charter Furniture Scale: 1/4"= 1'-0" Location:

Approved by: Salesman: Eddie Baker Date: DEC. 15, 2004 Drawing#:

#R5-3


14'-11
06 DET. GRADING - EAST C
3:04
D
G
3:06 SIM.
PREFIN. COPING
B
3:06 SIM.
A
4.8
T.O.S.
23'-9"
3:20
FACE BRICK
(4")
(4")
(± 12") TOP OF BRICK LEDGE (TYP.)
SEE DET. 3-12
SEE DET. 3-12
03 EAST
1/16" = 1'-0"
FACADE AREA 160' x 24' = 3840.00 SQ FT
A
B
C
D
E
3:04
PREFIN. COPING
4.8"
TOS
3-20

Council Agenda Item: #R6

SUMMARY:
Council is requested to have a first reading of an ordinance granting a franchise to TXU Electric Delivery Company and conduct a public hearing concerning the new franchise agreement.

FINANCIAL IMPACT:
There is no direct impact associated with conducting the public hearing. Once approved, the new franchise agreement will provide the same revenue from TXU as the Town has been receiving in the past. For the fiscal year ended 9/30/04, the Town had received $1,568,012 for TXU's use of public right-of-ways for the distribution of electric power.

BACKGROUND:
The franchise TXU had with the Town expired the end of July 2004. Although the Town had been working with TXU for the past year to negotiate a new agreement, the company's extensive corporate reorganization and restructuring delayed finalization of negotiations until this time. Due to his extensive expertise in public utility law, the Town had Clarence West develop the new franchise agreement with TXU. Mr. West had developed the Town's comprehensive right-of-way ordinance governing the actions of companies utilizing the Town's public right-of-ways to conduct business. Attached is a memo from Mr. West summarizing the major aspects of the new franchise agreement.

The Town's city charter includes a fairly rigorous process for approving franchises. There must be two readings of the ordinance with associated public hearings prior to adoption of the ordinance. Once the ordinance is adopted, it must be published once a week for four consecutive weeks. Thirty days following adoption, the new franchise takes effect.

RECOMMENDATION:
At this time no Council action is necessary, although staff will be recommending approval of the proposed franchise agreement.

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Counselor and Attorney at Law
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AUSTIN, TEXAS 78701
www.cawestlaw.com

Direct Dial: 512.499.8838
Fax: 512.322.0884
cawest@cawestlaw.com

MEMORANDUM

TO: Randy Moravec, Town of Addison

FROM: Clarence A. West, Esq.

RE: **Proposed TXU Electric Franchise**

DATE: December 29, 2004

Background

By adopting Ord. No. 1 in 1953, the Town of Addison entered into a fifty (50) year electric franchise with Texas Power and Light Company, the predecessor to Texas Utilities ("TXU") in 1953. ("1953 Electric Franchise"). The 1953 Electric Franchise was amended twice, in 1993, by Ordinance No. 093-041, increasing the franchise fee from 2% to 4% of gross revenue, and again in 2002 to conform the franchise fee to the settlement in *Denton v. TXU Electric Company, et al,* concerning the gross revenue franchise fee base and calculation of payments (see explanation below). A new electric franchise has been negotiated and is recommended for adoption.

Below are comments on the key provisions in the proposed new franchise.

Proposed New TXU Electric Franchise

Term – The term of this franchise was intended to be approximately ten years from date the last franchise terminated, and therefore is scheduled to expire on July 31, 2014. (Section 3)

Police Power Reservation of Rights – The franchise ensures that the City retains all of its police power rights to promulgate ordinances which regulate the rights-of-ways and the construction of facilities in its rights-of-ways through its police powers. (Section 8.1)

Franchise Fees – Franchise fees are to be paid consistent with the *Denton v. TXU Electric Company, et al* litigation. The franchise fee has two components, the Municipal Franchise Charge, which is the statutory per kWh charge[1], plus 4% on the gross revenues from

[1] Utility Code Sec. 33.008 (b), kWh charges paid to the City since January 1, 2002 and which is based on the 4% gross revenue franchise fee paid the city in 1998.

"discretionary" income TXU receives from installations, such as (a) charges to connect, disconnect, or reconnect power; (b) charges for automated meter readings; (c) other service charges; and (d) payments for non-standard construction of facilities. With each payment of franchise fees, the franchise expressly requires that a report be given with each payment, detailing the calculations upon which the franchise fee payment is based. The franchise fee provision also provides that in the event another city is paid more in franchise fees, then this franchise would be revised accordingly. (Section 5)

The franchise provides for the right of the City to have access to the records of TXU to conduct an audit. (Section 6)

Relocation of Utility Facilities – This franchise provides that in the event that the City requires the relocation of electric utility facilities for changes in the rights-of-ways for construction for city projects, the electric utility will move its facilities; the cost to relocate those facilities are to be reimbursed by the Town, except to the extent that applicable state or federal law provides that the electric utility is to pay for that cost. The City had requested that TXU agree to relocate its facilities at its cost for any city public works project, but they would only agree to relocate at their cost if it was a street "widening and straightening" project. As a "compromise" we adopted the language in the franchise which reserves the City's right to have TXU relocate at TXU's cost as allowed by state law now or in the future. It is the City's legal position that TXU is to relocate its facilities at its cost in a broader array of city projects than just a street widening or straightening project in accordance with case law. (Section 8.3)

Indemnity and Insurance – This franchise allows TXU Electric to be self-insured. However, if they self-insure, they are required to provide the same type of defense representation and coverage as an insurance carrier. Detailed language was included in this franchise as TXU's responsibility to indemnify and defend the City for liability claims. (Section 9)

Termination and Compliance Enforcement Provisions – The franchise expressly provides that in the event there is noncompliance with the franchise after notice is given, with an opportunity to cure, the City may terminate the franchise. (Section 12)

#R6-3

ORDINANCE NO. _____

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO TXU ELECTRIC DELIVERY COMPANY, AN ELECTRIC TRANSMISSION AND DISTRIBUTION UTILITY, AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF ADDISON, TEXAS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER SUBJECT TO THE CONDITIONS, RESTRICTIONS, AND LIMITATIONS OF THIS ORDINANCE; PRESCRIBING THE CONDITIONS, RESTRICTIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING COMPENSATION FOR SUCH USE; PROVIDING THE TERM OF FRANCHISE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE METHOD OF ACCEPTANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. GRANT OF FRANCHISE.

That the Town of Addison, Texas (the "City"), a home rule municipality pursuant to the Texas Constitution, the laws of the State of Texas, and its Home Rule Charter (the "City Charter"), subject to the terms and conditions of this Ordinance (the "Ordinance"), does hereby grant to TXU Electric Delivery Company, an electric transmission and distribution utility and a Texas corporation (the "Electric Delivery Utility"), its successors and permitted assigns, but not its affiliates or subsidiaries, except as provided for herein, the non-exclusive right, privilege and franchise to use the Public Rights-of-Way (hereinafter defined) of the City as provided herein for the purpose of locating, installing, using, maintaining, repairing, constructing, operating, and replacing Facilities for the transmission and distribution of electric power to the City, the inhabitants thereof and persons, firms and corporations beyond the corporate limits thereof. This Franchise does not grant to the Electric Delivery Utility the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

The right of the Electric Delivery Utility to use the Public Rights-of-Way as set forth above is not an exclusive right, and the City has and reserves the right in its sole discretion to make or grant a similar or dissimilar use of the Public Rights-of-Way to any other person, firm, corporation, or other business entity of whatever kind.

SECTION 2. DEFINITIONS.

2.1 "Franchise" shall mean this Ordinance and all rights and obligations established herein.

2.2 **"**Municipal Franchise Charge**"** shall mean the fee authorized by Section 33.008(b) of the Public Utility Regulatory Act, Title 2, Texas Utilities Code ("PURA"), currently the product of a factor of .002544 cents/kWh multiplied by each kilowatt hour of electricity delivered to each retail customer within the City of Addison's municipal boundaries, or any amended fee calculation for which the Texas Legislature or Public Utility Commission may require.

2.3 "Public Rights-of-Way" shall mean the public streets, public alleys, public highways and other public property, of and owned or controlled by the City and beneath the surface thereof as they may now or hereafter may exist and as defined herein but not including bridges or other City improvements or infrastructure in, on or over the Public Rights-of-Way.

2.4 "Facilities" shall mean electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

SECTION 3. EFFECTIVE DATE; TERM OF FRANCHISE.

Upon the filing with the City by the Electric Delivery Utility of the acceptance required under Section 4, this Franchise shall be in full force and effect thirty (30) days from and after the date of the final passage and approval of this Ordinance by the City in accordance with the City's Home Rule Charter until July 31, 2014.

SECTION 4. ACCEPTANCE OF FRANCHISE.

4.1 When this Franchise becomes effective, all previous ordinances of the City granting a franchise for the transmission and distribution of electric power purposes that were held by the Electric Delivery Utility (or its predecessor in interest) shall be automatically repealed, and shall be of no further force and effect; provided, however, that any City claim,

action or complaint that arose under or pursuant to any such previous ordinance shall continue to be governed by the provisions of that ordinance and such previous ordinance shall continue in full force and effect for such purposes. The Electric Delivery Utility shall, within thirty (30) days from the final passage of this Franchise by the City, file its written acceptance of this Franchise with the Office of the City Secretary.

4.2. This Franchise shall be rendered null and void if written acceptance of this Franchise is not filed by the Electric Delivery Utility within such thirty (30) day period.

SECTION 5. FRANCHISE FEE.

5.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, franchise taxes, license, permit and inspection fees or charges, bonds, street or alley rentals, certain regulatory expenses, subject to sections 5.5 and 5.6 herein, as may be otherwise due and owing under Section 33.023 of PURA, as amended, or any similar or successor law, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, the Electric Delivery Utility agrees to and shall pay to the City a franchise fee consisting of the following:

(a) the Municipal Franchise Charge. The first payment hereunder shall be due and payable on August 1, 2005, based on each kilowatt hour of electricity delivered by the Electric Delivery Utility during the preceding twelve-month period ended June 30, 2005, to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. This initial payment and the payments provided on or before August 1 of each year throughout the life of this Franchise are for the rights and privileges granted hereunder for the twelve month period succeeding the payment date (August 1 – July 31). Thereafter, on or before August 1 of each year throughout the life

of this Franchise, the Electric Delivery Utility shall pay to the City the Municipal Franchise Charge as required or authorized by Section 33.008(b) of PURA, as currently enacted and as amended during the term of this Franchise, based on the preceding twelve-month period ending June 30. The final Municipal Franchise Charge payment under this Franchise is due on or before August 1, 2013 and covers the privilege period of August 1, 2013 – July 31, 2014; and

(b) a sum equal to four percent (4%) of gross revenues received by the Electric Delivery Utility from services identified in the Electric Delivery Utility's "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD 1 through DD24, that are for the account or benefit of an end-use retail electric consumer (the "Discretionary Service Charges Fee") within the municipal boundaries of the City.

(1) The Discretionary Service Charges Fee shall be calculated on an annual calendar year basis, i.e., from January 1 through and including December 31 of each calendar year.

(2) The Discretionary Service Charges Fee shall be paid at least once annually on or before April 30 each calendar year based on the total Discretionary Service Charges received during the preceding calendar year. The initial Discretionary Service Charge Fee amount due under this Franchise shall be paid on or before April 30, 2005 and will be based on the calendar year January 1 through December 31, 2004. The final two Discretionary Service Charge Fee amounts due under this Franchise shall be paid as follows: On or before April 30, 2014 the last full twelve month payment will be due and will be based on the calendar year January 1 through December 31, 2013, with a final Discretionary Service Charge Fee payment for the last six months under this Franchise to be paid on October 15, 2014 for the period January 1, 2014 to July 31, 2014. The obligation to make the final Discretionary Service Charge Fee payment shall survive the expiration of this Franchise.

5.2 The Electric Delivery Utility shall provide the City a statement which shall accompany each payment to the City to evidence a correct payment to the City. Electric Delivery Utility hereby stipulates that its reports may be treated by the City exactly as if they were filed

under oath. Late or delinquent payment by the Electric Delivery Utility shall accrue interest. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

5.3 Electric Delivery Utility Discretionary Service Charges Fee Recovery Tariff

(a) Electric Delivery Utility may file a tariff amendment(s) to provide for the recovery of the Discretionary Services Charges Fee.

(b) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the Discretionary Services Charges Fee; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the Discretionary Services Charges Fee is an issue, the City will take an affirmative position supporting the 100% recovery of such Fee by Electric Delivery Utility and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such Fee by Electric Delivery Utility.

(c) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Discretionary Service Charges Fees by Electric Delivery Utility.

5.4 This Section applies only if, after the effective date of this Franchise Agreement, Electric Delivery Utility enters into a new municipal franchise agreement or renews, modifies or amends an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the public rights-of-way than the calculation under 33.008(b) of PURA, which, if applied to the City, would result in a greater amount of franchise fees owed the City than under this Franchise Agreement.

(a) City shall have the option to:

(1) Have Electric Delivery Utility select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or

comparable provisions that, at Electric Delivery Utility 's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and

(2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a)(1).

(b) City may not exercise the option provided in Section 5.4(a) if any of the provisions that would be included in this franchise are, in Electric Delivery Utility's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

(c) In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Electric Delivery Utility shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.

(d) Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 5.4(a), and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Electric Delivery Utility's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 5.4(a), then Electric Delivery Utility shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.

(e) The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

5.5 Notwithstanding anything to the contrary in Section 5.1 hereof, if during the term of this Franchise the Electric Delivery Utility files general rate cases and the City incurs cumulative expenses in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008 which would otherwise have been reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law, in excess of Four Million and No/100 Dollars ($4,000,000.00), then in such event, the Electric Delivery Utility shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008, in excess of said $4,000,000.00. The term "general rate case" as used in this Ordinance means a rate case initiated by the Electric Delivery Utility in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which the Electric Delivery Utility's overall revenues are determined in setting such rates. The City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under One Million and No/100 Dollars ($1,000,000.00) per general rate case.

5.6 Notwithstanding the above section 5.1, City reserves its rights and does not waive any claim that Ordinance No. 093-041 requires reimbursement of general rate case expenses incurred by the City after August 24, 2008, and ending with the term of this Franchise, that would have been otherwise reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law.

SECTION 6. AUDIT OF ELECTRIC DELIVERY UTILITY'S RECORDS AND REPORTS.

6.1 Books of Account. The Electric Delivery Utility shall keep complete and accurate books of accounts and records of its business and operations under and in connection

with this Franchise. To the extent practicable, all such books of accounts and records shall be made available at the Electric Delivery Utility's principal office in Dallas, Texas.

6.2 Access by City. The City Manager or the City Manager's designee shall, upon thirty (30) days prior written notice to the Electric Delivery Utility, have the right to access and to inspect the books of accounts and records of the Electric Delivery Utility for the period then subject to audit under Section 33.008(e) of the Public Utility Regulatory Act to ascertain the correctness of any payments and reports to the City, as provided for in Section 33.008(e) of the Public Utility Regulatory Act, and as to the Electric Delivery Utility's compliance with this Franchise, and Electric Delivery Utility shall fully cooperate in making available its accounts and records and otherwise assisting in these activities.

6.3 Audits. The City Manager may cause to be conducted no more than once annually, an audit to verify the accuracy of the method used to compute the Electric Delivery Utility's Franchise Fee payments to the City and to verify that all utility accounts within the City are properly included in the computation of the Franchise Fee. Said audit shall be limited to the time period subject to audit under PURA Section 33.008(e). If either party discovers that the Electric Delivery Utility has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by the Electric Delivery Utility within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the option of the City, either be refunded within thirty (30) days of determination OR be offset against the next payment due from Electric Delivery Utility. Such payments shall include interest as provided for in Section 5.2.

SECTION 7. ANNEXATION.

This Franchise shall extend to and include any and all territory that is annexed by or otherwise added to the corporate limits of the City during the term of this Franchise. Upon receipt of written notification by the City of newly annexed areas, or other areas added to the City limits, the Electric Delivery Utility shall promptly initiate a process to reclassify affected customers into the City limits in a timely manner. The annexed areas or other areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation.

Upon request from the City, the Electric Delivery Utility will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments.

SECTION 8. CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY.

8.1 In connection with any activity of, by, on behalf of, or for the benefit of the Electric Delivery Utility on or within the Public Rights-of-Way under this Franchise, the Electric Delivery Utility shall comply with the City Charter and all lawful ordinances, rules, codes, laws, standards, policies, and regulations of the City (including, without limitation, the right-of-way construction, permitting, and relocation provisions of the Code of Ordinances) as now existing or as the same may be adopted, supplemented, amended or revised (together, "City Standards"). To the extent any City Standards conflict with this Franchise, the requirements of this Franchise shall govern. The Electric Delivery Utility shall also comply with any and all applicable laws, standards, policies, regulations, and rules, whether federal or state. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Public Utility Regulatory Act, or other State or Federal Law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including, without limitation, ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation. To the extent practicable City shall provide Electric Delivery Utility with reasonable notice and opportunity to review and comment upon any new or revised City Standards that impact Electric Delivery Utility's use of the Public Rights-of-Way.

8.2 Electric Delivery Utility shall locate, install, use, maintain, repair, construct, operate, and replace its Facilities to minimize interference with traffic (motor vehicle, pedestrian, or otherwise) and shall perform work in a timely and expeditious manner, and shall promptly clean up and restore to the approximate condition at the time disturbed, all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with applicable City Standards. With respect to Electric Delivery Utility Facilities not located in public streets, alleys or highways, to the extent the Electric Delivery Utility is authorized to locate such Facilities in Public Rights-of-Way other than public streets, alleys, or highways, the location of Electric Delivery Utility's

Facilities shall be subject to approval by the City Manager prior to construction or installation; provided however, said approval shall not be unreasonably withheld. When Electric Delivery Utility makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Electric Delivery Utility shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions, all in accordance with the most recent edition of the Uniform Manual on Traffic Control Devices and applicable City Standards. In determining the location of Electric Delivery Utility's Facilities within the City, the Electric Delivery Utility shall not interfere with then existing above-ground or underground structures, equipment and facilities of the City, other utility franchisees (which have received a franchise from the City to use the Public Rights-of-Way), and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment and facilities within the Public Rights-of-Way (such other utility franchisees and other persons being "Public Right-of-Way Users"). The City will seek, after the effective date of this Franchise, to include in its agreements with other utilities and users of the Public Rights-of-way provisions requiring that such users shall not interfere with the Electric Delivery Utility Facilities. The Company recognizes that it is the responsibility of other utility franchisees and Public Rights-of- Way Users to ensure that their activities do not interfere or damage the Electric Delivery Utility facilities and will pursue any damage claims directly with the responsible Public Rights-of-Way Users. The Electric Delivery Utility shall be responsible to repair at its sole cost all damage caused by Electric Delivery Utility activities pursuant to this Franchise. If any such damage poses a threat to the health, safety or welfare of the public or residents, Electric Delivery Utility, upon receipt of notice, shall take prompt actions to mitigate the health, safety or welfare concerns and shall promptly initiate repairs. If the City requests the Electric Delivery Utility to initiate repairs and the Electric Delivery Utility fails to initiate and timely complete repairs within a reasonable time after the City's request, after notice to the Electric Delivery Utility of the City's intent, the City may repair or cause repairs to be made at the Electric Delivery Utility's expense, and Electric Delivery Utility shall promptly pay to the City the actual cost incurred by the City in making or causing such repairs. The Electric Delivery Utility shall require its contractors working in the Public Rights-of-Way to hold all necessary contracting licenses and permits required by the City, or otherwise required by any law, rule, or regulation, for such business. Except as otherwise provided for herein, in determining the location of the facilities of

the City, the City shall minimize interference with then existing Facilities of the Electric Delivery Utility. In the event of a conflict between the location of the proposed Facilities of the Electric Delivery Utility and the location of the existing facilities of the City or other Public Right-of-Way Users within Public Rights-of-Way that cannot otherwise be resolved, the City or an authorized agent of the City shall use its reasonable efforts and attempt to resolve the conflict and determine the location of the respective facilities, provided that if the City determines in such instance that proposed Facilities of the Electric Delivery Utility must be relocated from that proposed by the Electric Delivery Utility, the City will designate a reasonable alternate location within the Public Rights-of-Way for Electric Delivery Utility. Except in an emergency, the Electric Delivery Utility shall be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with the Electric Delivery Utility's operations in Public Rights-of-Way in accordance with City Standards. Under no circumstances, however, shall the Electric Delivery Utility be required to pay for such permitting or be required to post bonds.

8.3 The City reserves the right for any reason whatsoever to use, change the grade of, construct, install, repair, alter, maintain, relocate, modify, open, close, reduce, or widen (collectively "change") any Public Right-of-Way, within the present or future limits of the City. At the City's request, the Electric Delivery Utility shall relocate or remove its Facilities in order to accommodate such change of any Public Right-of-Way. If the Electric Delivery Utility is required by the City to remove or relocate its Facilities, Electric Delivery Utility shall be entitled to reimbursement from the City of the cost and expense of such removal or relocation except to the extent PURA Section 37.101(c) or other state or federal law requires or permits the City to require, the relocation to be done at Electric Delivery Utility's expense.

8.4 If the City abandons any Public Right-of-Way in which the Electric Delivery Utility has Facilities, such abandonment shall be conditioned on the Electric Delivery Utility's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Electric Delivery Utility for all removal or relocation expenses if Electric Delivery Utility agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Electric Delivery Utility to remove or relocate its facilities and Electric Delivery Utility agrees to such removal or relocation, such removal or relocation

shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

8.5 The Electric Delivery Utility shall install, construct, repair, maintain and replace its Facilities in a good and workmanlike manner.

8.6 City Inspection. The City retains the right to make visual, non-invasive inspections of the Electric Delivery Utility's Facilities.

8.7 Temporary Removal of Wires. The Electric Delivery Utility on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The total expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Electric Delivery Utility may require such full payment in advance. Electric Delivery Utility shall be given not less than thirty (30) days advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code.

SECTION 9. INDEMNITY AND INSURANCE.

9.1 **(A) IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ELECTRIC DELIVERY UTILITY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE ELECTRIC DELIVERY UTILITY'S PERFORMANCE OF THIS FRANCHISE, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.**

(B) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ELECTRIC DELIVERY UTILITY SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE

THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(C) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS FRANCHISE THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE ELECTRIC DELIVERY UTILITY AND THE INDEMNITEE, THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE ELECTRIC DELIVERY UTILITY'S OWN PERCENTAGE OF RESPONSIBILITY.

(D) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (A), THE ELECTRIC DELIVERY UTILITY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO CITY'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. ELECTRIC DELIVERY UTILITY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE AGREEMENT. IF ELECTRIC DELIVERY UTILITY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ELECTRIC DELIVERY UTILITY SHALL BE LIABLE FOR ALL REASONABLE AND NECESSARY DEFENSE COSTS INCURRED BY CITY, EXCEPT AS LIMITED IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

9.2 Electric Delivery Utility may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks and obligations undertaken pursuant to this franchise and shall not be required to maintain insurance; provided that Electric Delivery Utility furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance. Electric Delivery Utility shall provide the City with evidence of the form and basis for insurance coverage or self insurance, as applicable, within thirty (30) days of the effective date of this franchise ordinance. Provided however that the Electric Delivery Utility's self-insurance shall provide to the City, its officers, employees and agents, with the same defense as would be provided by an insurance carrier and with substantially the same coverage as required by other users of the Public Right-of-Way in the City as set forth in Chapter 70 of the Code of Ordinances, currently or as it may be amended (or any successor ordinance or

regulation). Should Electric Delivery Utility elect to change the form or basis of insurance during the term of this franchise, Electric Delivery Utility shall notify the City. Electric Delivery Utility shall provide documentation necessary for review by the City of the changed circumstances of Electric Delivery Utility.

SECTION 10. TRANSFERS AND ASSIGNMENT.

Prior to assignment, transfer, pledge or other conveyance of its rights, duties and obligations under this franchise, except to an affiliated entity, Electric Delivery Utility shall obtain prior written consent of the governing body of the City, which consent will not be unreasonably withheld or delayed. For purposes hereof, an "affiliated entity" means Electric Delivery Utility's corporate parent owning more than 50% of the voting shares of Electric Delivery Utility, a subsidiary of Electric Delivery Utility's corporate parent (provided the corporate parent owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which Electric Delivery Utility owns a controlling interest of more than 50%, or a subsidiary entity of Electric Delivery Utility in which Electric Delivery Utility owns a controlling interest of more than 50%. Electric Delivery Utility shall provide notice of any assignment, transfer, pledge or conveyance to an affiliated entity at the same time it provides written notice to the Public Utility Commission. Any assignment, transfer, pledge or other conveyance, whether to an affiliated entity or otherwise, shall require the assignee or transferee to perform all of the terms and conditions of this franchise.

SECTION 12. FORFEITURE AND TERMINATION.

12.1 The City shall notify the Electric Delivery Utility, in writing, of an alleged failure of the Electric Delivery Utility to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Electric Delivery Utility shall, upon its receipt of such notice, either:

(a) diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or

(b) if such failure cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time so long as

the Electric Delivery Utility has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter is diligently attempting to cure the failure; or

(c) if the Electric Delivery Utility reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Franchise, submit to the City within ten (10) days after its receipt of the notice the Electric Delivery Utility's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Electric Delivery Utility's Defense").

12.2 In the event that the Electric Delivery Utility does not comply with subparagraphs (a), (b), or (c) above, or if the Electric Delivery Utility does comply with subparagraph (c) above but the City, after its review of the Electric Delivery Utility's Defense, nevertheless believes that the Electric Delivery Utility has failed to comply with a material provision of this Franchise, the City may declare this an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.3. Notice of such declaration shall be given to the Electric Delivery Utility prior to the City's exercise of any such remedies.

12.3 Not sooner than seven (7) days following the City's declaration of an Uncured Event of Default and the giving of notice of such declaration to the Electric Delivery Utility, the City shall be entitled to exercise any and/or all of the following remedies:

(a) The commencement of an action against Electric Delivery Utility at law for monetary damages.

(b) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, that as a matter of equity, are specifically enforceable.

(c) The commencement of any other action which may be available to the City.

(d) The termination of this Franchise in accordance with the provisions of Section 12.4.

12.4 In accordance with the provisions of Section 12.3(d), this Franchise Agreement may be terminated upon at least thirty business day's prior written notice to Electric Delivery Utility. City shall notify Electric Delivery Utility in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Electric Delivery Utility shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Electric Delivery Utility may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction within thirty days following the effective date of such final decision. Upon timely appeal by Electric Delivery Utility of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court or administrative order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Electric Delivery Utility's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code**.**

SECTION 13. NONEXCLUSIVE FRANCHISE.

Nothing contained in this Franchise shall ever be construed as conferring upon the Electric Delivery Utility any exclusive rights or privileges of any nature whatsoever.

SECTION 14. ENTIRE AGREEMENT.

This Franchise contains all of the agreements of the parties with respect to the subject matter covered in this Franchise, and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose, with the exception of the Compromise Settlement Release agreement signed by the City on October 24, 2002.

SECTION 15. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 16. NON-WAIVER; RIGHTS CUMULATIVE; SURVIVING RIGHTS, REMEDIES, AND OBLIGATIONS.

Failure of the City to declare, or any delay by the City in taking any action in connection with, any breach or default of this Franchise by the Electric Delivery Utility immediately upon the occurrence thereof shall not constitute or be construed to be a waiver by the City of such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default of the Electric Delivery Utility does not act as a waiver of the City's rights to declare another breach or default. By entering into this ordinance, City does not waive any claim which the City may have under the Prior Electric Franchise, except to the extent any such claims were settled in that certain Compromise Settlement Release agreement signed by the City on October 24, 2002. Except as otherwise provided for herein, the rights and remedies provided by this Franchise are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

SECTION 17. GOVERNING LAW.

This Ordinance shall be governed by and construed in accordance with the laws of the State of Texas and the City Charter; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Ordinance.

SECTION 18. NOTICES.

Any notice required to be given from one party to the other party under this Franchise shall be in writing and shall be deemed to have been given and received if (i) delivered in person

to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America, proper postage prepaid, and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

To the City:	To Electric Delivery Utility:
Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager	TXU Electric Delivery Company 500 N. Akard Street, Suite 13-062 Dallas, TX 75201 Attn: Manager Municipal Regulatory Affairs

SECTION 19. PARAGRAPH HEADINGS; CONSTRUCTION.

The paragraph headings contained in this Franchise are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 20. THIRD PARTIES.

This Franchise and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

First reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the _____day of _____, 2004.

Second reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the _____day of _____, 2004.

DULY PASSED AND APPROVED by the City Council of the City of Addison, Texas on the _____ day of _____, 2004.

APPROVED:

_____
MAYOR

APPROVED AS TO FORM:

_____
CITY ATTORNEY

CORRECTLY ENROLLED:

_____
CITY SECRETARY

Council Agenda Item: #R7

SUMMARY:
Council approval is requested of a resolution authorizing the Town's intervention in the Atmos Energy Company gas cost review before the Railroad Commission.

FINANCIAL IMPACT:
There is no financial impact associated with this action. Any consultant costs incurred by the cities' steering committee to study the rate increase will be paid by Atmos, which will then recoup the costs through the new rates.

BACKGROUND:
Earlier this year TXU sold its Texas gas system to Atmos Energy Company. Area cities received notice that Atmos was filing a three-year gas cost prudence review before the Railroad Commission that is styled Gas Utilities Docket (GUD) No. 9530. This filing is one in a series of triennial filings required by the Commission as part of the Final Order in GUD No. 8664, TXU's city gate gas rate case decided in 1997. The purpose of the filing requirement is to allow a periodic review of the prudence of TXU's gas purchases.

Documentation filed by the Company indicates that TXU purchased 1.93 Bcf of gas during the three-year period covered by the review at a total cost of $2.2 billion. This is twice the cost of gas purchases included in TXU's filing for the previous three-year period. This is despite the fact that one of the representations made by TXU to settle the last prudence review was that it had renegotiated a gas purchase contract for an expected benefit to ratepayers of over $20 million. For this filing, monthly average costs per MMBTU ranged from $2.34 to $8.17, with the average cost being $4.67. Testimony included in the filing indicates that TXU only sought to lock in prices for 35-40 percent of the gas needed to meet its anticipated winter demand during this three-year period. Over half of all of the gas purchases were made on the spot market. If these or other purchases are found to be imprudent by the Commission, Atmos will be ordered to pay refunds to all of its customers.

The steering committee of cities made an effort recently to negotiate a resolution of the gas prudence docket, as well as other outstanding regulatory issues (e.g. rate case expenses from GUD No. 9400) with Atmos. Since Atmos rejected that settlement offer, it is appropriate that Cities intervene in Gas Utilities Docket No. 9530 to evaluate the possibility of refunds attributable to excessive gas cost purchases

It has been a long-standing policy of the Town to protect the interests of its residents and businesses in any utility rate case. The Town is best served by joining the consortium of cities that form the steering committee. The attached resolution authorizes the Town's intervention in the filing of the gas cost prudence review.

RECOMMENDATION:
The Town has been very successful in contesting past gas rate cases. It is recommended Council adopt the resolution.

#R7-2

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS AUTHORIZING INTERVENTION BEFORE THE RAILROAD COMMISSION OF TEXAS IN GAS UTILITIES DOCKET (GUD) NO. 9530; AUTHORIZING PARTICIPATION WITH OTHER CITIES SERVED BY ATMOS ENERGY CORPORATION, FORMERLY KNOWN AS TXU GAS COMPANY, IN ADMINISTRATIVE AND COURT PROCEEDINGS INVOLVING A GAS COST PRUDENCE REVIEW RELATED TO A FILING MADE IN SEPTEMBER OF 2004 AS REQUIRED BY THE FINAL ORDER IN GUD NO. 8664; DESIGNATING A REPRESENTATIVE OF THE CITY TO SERVE ON A STEERING COMMITTEE; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES

WHEREAS, the Town of Addison, Texas is a customer of Atmos Energy Corporation, formerly known as TXU Gas Company, (Atmos/TXU Gas) and a regulatory authority with an interest in the rates and charges of Atmos/TXU Gas; and

WHEREAS, Atmos/TXU Gas made a filing at the Railroad Commission of Texas on or about September 24, 2004, now docketed as GUD No. 9530, for a gas cost prudence review of $2.2 billion in previously incurred and billed gas costs; and

WHEREAS, the filing made by Atmos/TXU Gas was required by the terms of the Final Order of the Railroad Commission in GUD No. 8664; and

WHEREAS, ratepayers of Atmos/TXU Gas, including the Town of Addison and its residents and businesses would be entitled to a *pro rata* portion of a refund associated with any costs found to have been unreasonable; and

WHEREAS, the Town of Addison and its residents and businesses could benefit from coordination with other Cities in a review of the reasonableness of the gas costs of Atmos/TXU

Gas and the joint participation in the Railroad Commission proceedings and any subsequent litigation or appeal related to those gas costs; and

WHEREAS, the reasonable costs associated with the participation of Cities in this ratemaking proceeding are reimbursable from the Company.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS THAT:

1. Intervention is hereby authorized in GUD No. 9530 and/or any successor docket at the Railroad Commission of Texas.

2. The City is authorized to cooperate with other Cities within the Atmos/TXU Gas system and hereby designates Randolph C. Moravec, Finance Director as a representative to a Cities' Steering Committee that shall direct the efforts of counsel and consultants and the course of settlement and/or litigation before the Railroad Commission or of an appeal to any court regarding any matter related to the gas cost prudence review filing made by Atmos/TXU Gas in 2004.

3. Atmos/TXU Gas shall promptly reimburse the City's reasonable costs associated with the City's participation in GUD No. 9530 or any subsequent proceeding.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 11h day of January, 2005.

_____
R. Scott Wheeler, Mayor

ATTEST:

By:_____
Carmen Moran, City Secretary

Council Agenda Item: #R8

SUMMARY:
Council approval is requested of a resolution suspending the interim rate increase filed by Atmos Energy Company.

FINANCIAL IMPACT:
There is no financial impact associated with this action. Any consultant costs incurred by the cities' steering committee to study the rate increase will be paid by Atmos, which will then recoup the costs through the new rates.

BACKGROUND:
Following years of relative inactivity, TXU Gas Company began filing a series of rate increases. In 2001, the company filed a rate increase for Dallas-area cities that averaged 3.9%. After negotiations with the cities' steering committee, the rate increase was reduced to only 1.25%. In May 2002, the company filed another increase that averaged 8% that would have suburban customers paying more for natural gas than Dallas customers. After several months of negotiations, the company and the steering committee agreed to a rate increase that, for Addison customers, averaged 3.5%, less than half of what the company originally requested. Then in 2003, the company filed its first statewide rate case (GUD No. 9400) that requested increases that would have increased average Addison residential bills almost 14%. Due to the cities' intervention, the resulting rates approved by the Railroad Commission resulted in Addison residential customer charges increasing only 5.8%.

Earlier this year TXU sold its Texas gas system to Atmos Energy Company. At the time of the purchase, Atmos proclaimed that it could operate the system more efficiently than TXU and realize several million dollars in annual savings. Despite this claim, Atmos recently filed an interim rate increase under a new section of the Utility Code known as GRIP (Gas Reliability Infrastructure Program). Prior to GRIP, a company would have to file a full-fledged rate filing to adjust customer rates. However, GRIP provides a streamlined process to recover funds spent to improve a distribution system's infrastructure.

The rate increase is relatively minor. Base monthly customer charges would be impacted as follows:

Rate Class	Existing Charge	Proposed Charge	% Increase
Residential	$ 9.00	$ 9.31	3.4%
Business	$ 15.50	$ 16.34	5.4%
Industrial	$ 150.00	$ 176.85	17.9%

Although the requested increases are not significant, they come within a year of a rate increase. Also, as attached documents reflect, Atmos Energy Company is doing very well and has not demonstrated the need for additional funds.

It has been a long-standing policy of the Town to protect the interests of its residents and businesses in any utility rate case. The Town is best served by joining the consortium of cities that form the steering committee. The attached resolution suspends implementation of the gas rate filing, commits the Town to participating with the steering committee, and authorizes the Town's participation in the rate case as filed with the Texas Railroad Commission.

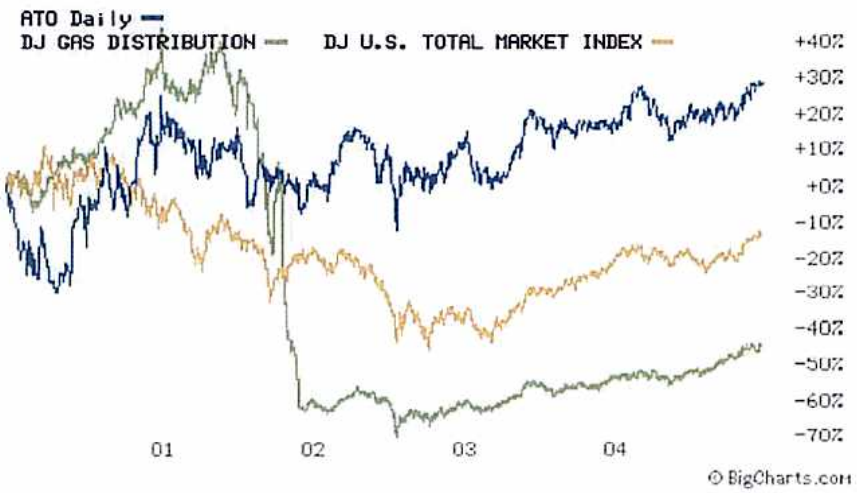
RECOMMENDATION:
The Town has been very successful in contesting past gas rate cases. It is recommended Council adopt the resolution.

BRIEFING BOOKS
THE WALL STREET JOURNAL.

COMPANY RESEARCH

Last	Change	% Change	Volume	52-Week High	52-Week Low	12/21/04	NYSE
27.18	0.23	0.85%	83,100	27.25 (12/21/04)	23.40 (5/10/04)	12:05 p.m. Eastern	USD

5-Year Price Performance vs Industry



Five-year price performance of stock, its DJ Industry group and the DJ U.S. Total Market Index, reindexed to zero.

Dow Jones
Industry Groups

Gas Distribution Index
12/21/04

Last	**95.99**
Point Chg.	0.69
% Chg.	0.72%

See more performance data at the Gas Distribution Industry Group Center

Performance During Past:	Atmos Energy Corporation	DJ Gas Distribution	DJ U.S. Total Market Index
3 Months	5.77%	8.69%	0.00%
6 Months	10.36%	17.58%	0.00%
Year-to-Date	10.91%	20.20%	0.00%
12 Months	11.59%	20.84%	0.00%
2 Years	16.36%	42.55%	0.00%
5 Years	28.33%	-44.22%	0.00%

Performance data reflects previous day's closing price, updated by 12 a.m. ET. Data is based on price appreciation only. Calculations do not include returns from dividend reinvestment. Historical data is displayed for the selected stock and its specified DJ U.S. Industry Index. The DJ U.S. Total Market Index measures the performance of the broad U.S. equity market and includes over 1800 component stocks.

Historical and current end-of-day data provided by FT Interactive Data.

For inquiries about this page, see Help or email us.

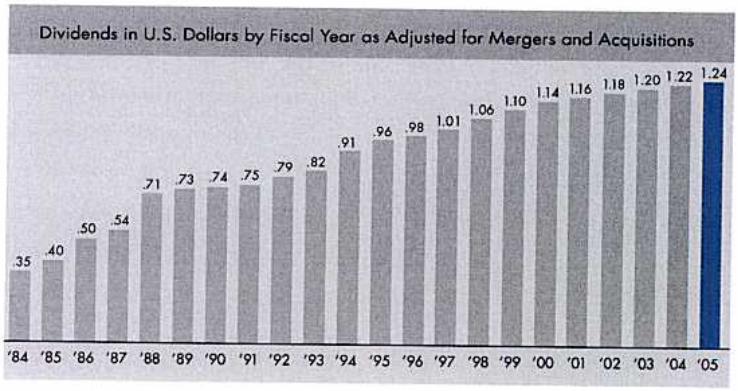
DOWJONES

Atmos Energy Corporation Facts

Financial Highlights as of September 30, 2004, unless noted

New York Stock Exchange symbol	ATO
Fiscal year end	September 30
Market capitalization	$1,582 million
Total shares outstanding	62.8 million
Fiscal 2004 consolidated net income	$86.2 million
Fiscal 2004 diluted earnings per share	$1.58
Fiscal 2004 operating revenues	$2,920 million
Fiscal 2005 indicated dividend rate	$1.24
Dividend yield	4.8%
Total assets	$2,870 million

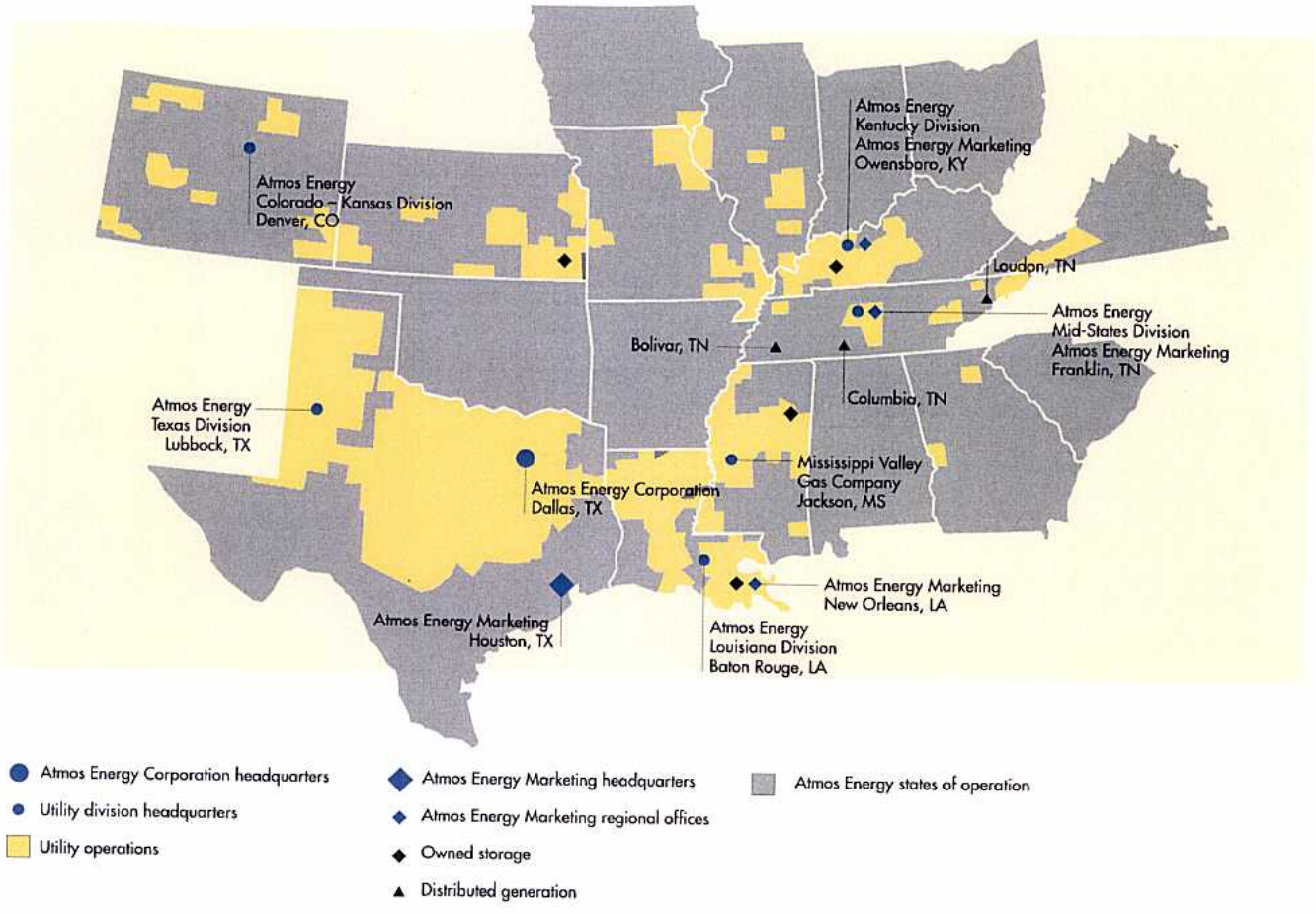
Atmos Energy Corporation Dividend Record



Atmos Energy Corporation Profile

Atmos Energy Corporation, headquartered in Dallas, Texas, is the largest natural-gas-only distributor in the United States, serving more than 3.2 million utility customers. Atmos Energy's utility operations serve more than 1,500 communities in Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas and Virginia. Atmos Energy's nonutility operations, organized under Atmos Energy Holdings, Inc., operate in 18 states. They provide natural gas marketing and procurement services to municipal, industrial and commercial customers and manage company-owned natural gas storage and pipeline assets, including one of the largest intrastate natural gas pipeline systems in Texas.

Atmos Energy Operations



Atmos Energy Corporation Financial Highlights (Unaudited)

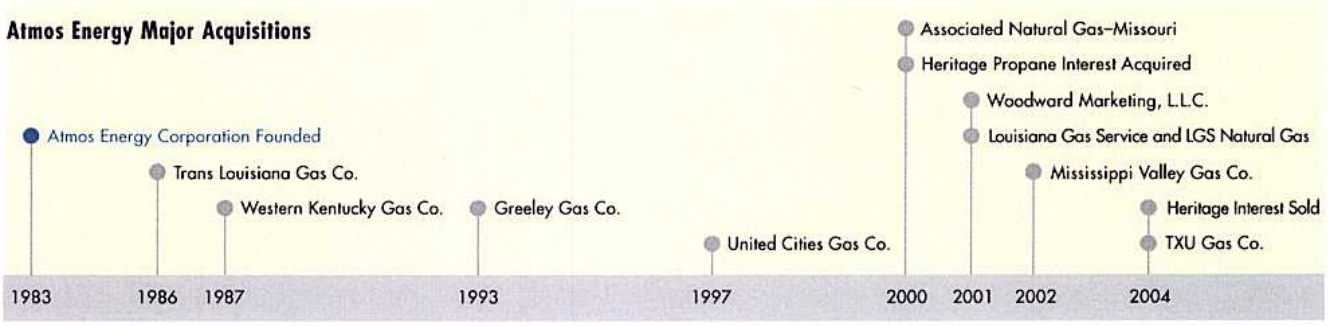
Statements of Income (000s except per share amounts)	Three Months Ended September 30 2004	Three Months Ended September 30 2003	Fiscal Year Ended September 30 2004	Fiscal Year Ended September 30 2003
Operating revenues*	$ 492,878	$ 436,872	$2,920,037	$2,799,916
Purchased gas cost*	403,358	337,094	2,357,846	2,264,940
Gross profit	89,520	99,778	562,191	534,976
Operation and maintenance expense	47,994	53,780	214,470	205,090
Depreciation and amortization	26,768	21,728	96,647	87,001
Taxes, other than income	11,478	10,988	57,379	55,045
Total operating expenses	86,240	86,496	368,496	347,136
Operating income	3,280	13,282	193,695	187,840
Miscellaneous income (expense)	1,657	(1,130)	9,507	2,191
Interest charges	15,931	15,981	65,437	63,660
Income (loss) before income taxes and cumulative effect of accounting change	(10,994)	(3,829)	137,765	126,371
Income tax expense (benefit)	(4,610)	(1,393)	51,538	46,910
Income (loss) before cumulative effect of accounting change	(6,384)	(2,436)	86,227	79,461
Cumulative effect of accounting change, net of income tax benefit	–	–	–	(7,773)
Net income (loss)	$ (6,384)	$ (2,436)	$ 86,227	$ 71,688
Basic income (loss) per share:				
Income (loss) before cumulative effect of accounting change	$ (.11)	$ (.05)	$ 1.60	$ 1.72
Cumulative effect of accounting change, net of income tax benefit	–	–	–	(.17)
Net income (loss)	$ (.11)	$ (.05)	$ 1.60	$ 1.55
Diluted income (loss) per share:				
Income (loss) before cumulative effect of accounting change	$ (.11)	$ (.05)	$ 1.58	$ 1.71
Cumulative effect of accounting change, net of income tax benefit	–	–	–	(.17)
Net income (loss)	$ (.11)	$ (.05)	$ 1.58	$ 1.54
Cash dividends per share	$ .305	$ .300	$ 1.22	$ 1.20
Weighted average shares outstanding:				
Basic	60,477	51,200	54,021	46,319
Diluted	60,477	51,200	54,416	46,496
Summary Net Income (Loss) by Segment (000s)				
Utility	$ (8,025)	$ (8,357)	$ 63,096	$ 62,137
Natural gas marketing	1,725	3,593	16,633	(970)
Other nonutility	(84)	2,328	6,498	10,521
Consolidated net income (loss)	$ (6,384)	$ (2,436)	$ 86,227	$ 71,688

Balance Sheet Items (000s)	Sept. 30, 2004	Sept. 30, 2003
Property, plant and equipment	$2,633,651	$2,480,139
Net property, plant and equipment	1,722,521	1,624,394
Total assets	2,869,883	2,625,495
Shareholders' equity	1,133,459	857,517

* In conjunction with the adoption of EITF 02-03, energy trading contracts resulting in delivery of a commodity where we are the principal in the transaction are included as operating revenues or purchased gas cost. All prior periods have been reclassified to conform with this presentation.

Strategy of Growing Through Acquisitions

Atmos Energy has grown through a series of acquisitions. From 279,000 original customers in 1983, the company has added 2.9 million customers. On October 1, 2004, it completed the acquisition of the operations of TXU Gas Company, its tenth major acquisition.



Strategy of Running Our Utilities Exceptionally Well

Lowest operation and maintenance expense per customer of $115, compared with a peer-group average of $195

Highest number of utility customers per employee of 749, compared with a peer-group average of 512

Industry leader in information and telecommunications technology

Hedged approximately 55 percent of anticipated flowing gas requirements for the 2004–2005 winter—approximately 55 percent in storage and 45 percent covered by financial contracts

Purchased gas cost adjustments adequate in all jurisdictions

Weather-normalized rates for approximately 35 percent of customer base and nonweather-sensitive margins for another 48 percent of customer base for the heating season of 2004–2005; WNA or higher base rates in effect in our eight largest states

Rate increases in five jurisdictions, providing approximately $16 million in annual revenues

Strategy of Growing Our Nonutility Operations

Full ownership of the former Woodward Marketing, ranked as one of the industry's most-respected mid-tier gas marketers

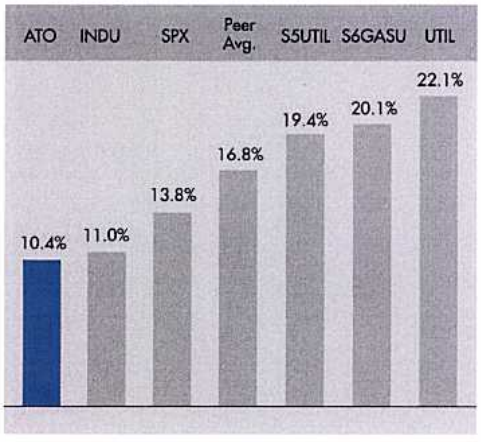
Distributed electric generation through Atmos Power Systems' projects at Bolivar, Columbia and Loudon, Tennessee

Nonutility natural gas storage fields in Kentucky and Louisiana containing 3.9 Bcf of working storage capacity and 2.4 Bcf of additional contractual storage capacity

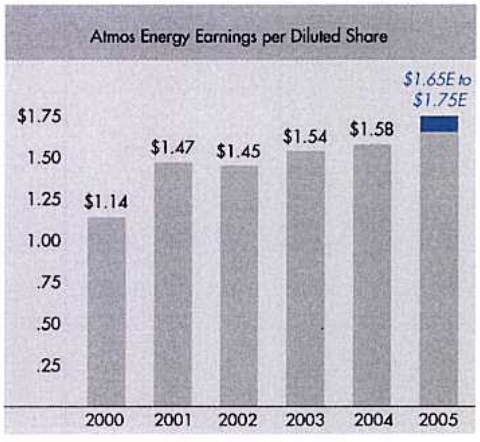
Expansion of nonutility operations through acquisitions in 2002 of a major gas storage field and gas marketing companies in Kentucky and gas contracts with dozens of municipalities in seven states

Addition of largest intrastate gas pipeline in Texas as a result of the acquisition of TXU Gas; we expect to develop new opportunities to use the pipeline to serve wholesale customers

Total Return in Fiscal 2004



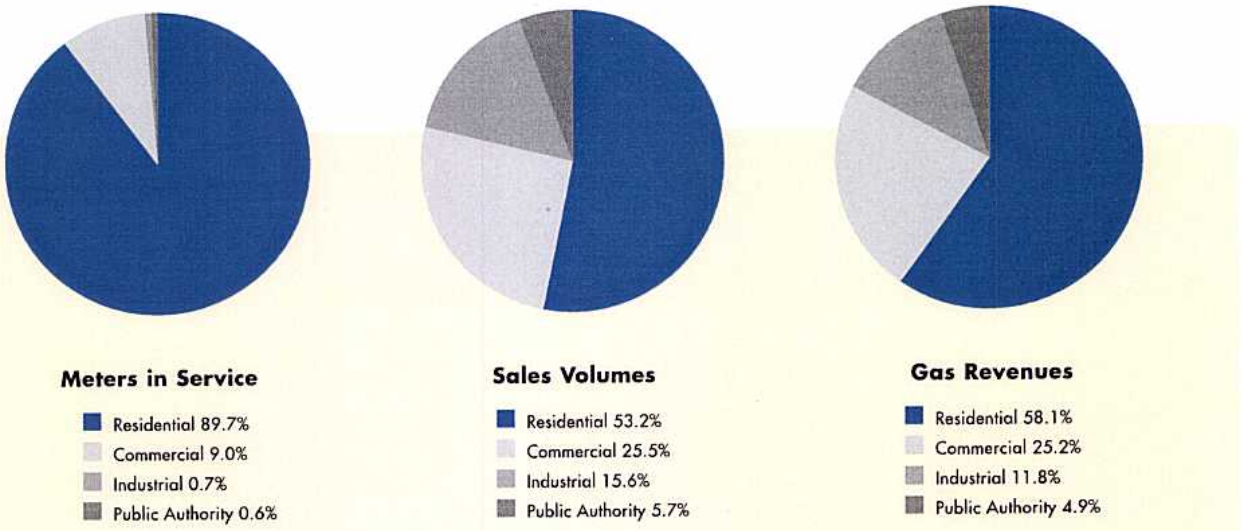
Earnings History and Fiscal 2005 Estimate



Key
ATO - Atmos Energy Corporation
INDU - Dow Jones Industrial Average
S5UTIL - Standard & Poor's 500 Utilities
S6GASU - Standard & Poor's Small-Cap Gas Index
SPX - Standard & Poor's 500 Index
UTIL - Dow Jones Utilities Index
Peer - ATG, LG, NJR, NWN, OKE, PNY, SJI, SWX and WGL
2005 earnings per share assumes normal weather, less volatile gas prices and no major acquisition.

Atmos Energy Common Stock Performance During Fiscal 2004 and Fiscal 2003	2004	2003	Change
Opening price at beginning of fiscal year on October 1	$ 24.08	$ 21.40	12.5%
Closing price on September 30	$ 25.19	$ 23.94	5.2%
52-week closing high	$ 26.86	$ 25.45	5.5%
52-week closing low	$ 23.68	$ 20.70	14.4%
52-week closing average	$ 25.05	$ 23.02	8.8%
Average daily volume	261,151	154,015	69.6%
Cash dividends paid per common share	$ 1.22	$ 1.20	1.7%
Total return to Atmos Energy shareholders	10.4%	17.2%	

Atmos Energy Utility Operations in Fiscal 2004



Atmos Energy Key Utility Operating Statistics During Fiscal 2004 and Fiscal 2003	2004	2003	Change
Utility sales volumes measured in MMcf			
Residential	92,208	97,953	(5.9)%
Commercial	44,226	45,611	(3.0)%
Industrial	26,972	31,622	(14.7)%
Public Authority	9,813	9,326	5.2%
Total utility sales volumes	173,219	184,512	(6.1)%
Transportation	87,746	70,159	25.1%
Total utility throughput	260,965	254,671	2.5%
Heating degree days	3,271	3,473	(5.8)%
Weather as percent of normal	96%	101%	
Utility contribution to net income	73.2%	86.7%	

For More Information

Susan C. Kappes, Vice President, Investor Relations and Corporate Communications
(972)855-3729 susan.kappes@atmosenergy.com
Visit our Web site for the latest financial information and news releases at www.atmosenergy.com.

ATMOS energy

#R8-4

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS SUSPENDING THE PROPOSAL BY ATMOS ENERGY CORP. TO IMPLEMENT INTERIM GRIP RATE ADJUSTMENTS FOR GAS UTILITY INVESTMENT IN 2003; AUTHORIZING PARTICIPATION WITH OTHER CITIES SERVED BY ATMOS ENERGY CORP., MID-TEX DIVISION, IN A REVIEW AND INQUIRY INTO THE BASIS AND REASONABLENESS OF THE PROPOSED RATE ADJUSTMENTS; AUTHORIZING INTERVENTION IN ADMINISTRATIVE AND COURT PROCEEDINGS INVOLVING THE PROPOSED GRIP RATE ADJUSTMENTS; DESIGNATING A REPRESENTATIVE OF THE TOWN TO SERVE ON A STEERING COMMITTEE; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES.

WHEREAS, the Town of Addison, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division, ("Atmos Mid-Tex" or "the Company") and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, Atmos Mid-Tex made filings with the City and the Railroad Commission of Texas ("Railroad Commission") in December, 2004, proposing to implement interim rate adjustments ("GRIP Rate Increases") pursuant to Texas Utilities Code § 104.301 on all customers served by Atmos Mid-Tex; and

WHEREAS, Atmos Energy Corporation has reported a twenty percent increase in net income for its fiscal year ended September 30, 2004, and projects further growth of income in 2005; and

WHEREAS, in May, 2004, the Railroad Commission entered its Final Order in GUD No. 9400 authorizing a rate increase that will produce additional annual revenues of $11.5 million for Atmos Mid-Tex; and

WHEREAS, Atmos Mid-Tex has projected that it will experience annual cost savings of at least $40 million over the costs included in rates approved in GUD No. 9400 and said savings are likely to greatly exceed the annual revenue requirement associated with any reasonable increases in invested capital that form the basis of the proposed GRIP rate increases; and

WHEREAS, ratepayers of Atmos Mid-Tex, including the City's residents and businesses, will be adversely impacted by the proposed GRIP Rate Increases; and

WHEREAS, the City and its constituency could benefit from coordination with other cities served by Atmos Mid-Tex ("Cities") in a review of the reasonableness of the proposed GRIP Rate Increases and joint participation in any proceedings at the Railroad Commission related to the proposed GRIP Rate Increases; and

WHEREAS, the reasonable costs associated with the participation of Cities in this rate proceeding are reimbursable from Atmos Mid-Tex.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, THAT:

1. The February 15, 2005, effective date of the GRIP Rate Increases proposed by Atmos Mid-Tex is hereby suspended to permit adequate time to review the proposed increases, analyze all necessary information, and take appropriate action related to the proposed increases.

2. The City is authorized to cooperate with other Cities to create and participate in a Steering Committee to hire and direct legal counsel and consultants, to negotiate with the Company, to make recommendations to the City regarding the proposed GRIP Rate Increases, and to direct any administrative proceedings or litigation associated with the proposed GRIP Rate Increases.

3. The City is authorized to intervene in any administrative proceedings or litigation associated with the proposed GRIP Rate Increases, including GUD No. 9560, the Company's proposed GRIP rate increase for its pipeline system filed at the Railroad Commission.

4. The City hereby designates Randolph C. Moravec, Finance Director as a representative to a Cities' Steering Committee that shall direct the efforts of counsel and consultants.

5. Atmos Mid-Tex shall promptly reimburse the City's reasonable costs associated with the City's activities related to the proposed GRIP Rate Increases.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 11^{h} day of January, 2005.

_____
R. Scott Wheeler, Mayor

ATTEST:

By:_____
Carmen Moran, City Secretary

Council Agenda Item: #R9

SUMMARY:

Council approval is requested for three additional five-year lease extension options with Brinker Texas, L.P (Brinker).

FINANCIAL IMPACT:

The Town will receive approximately $65,000 per year in lease payments from Brinker until 2007. At that time, lease payments will increase to approximately $70,000 per year. The proposed lease extensions will increase the annual lease payments to approximately $120,000 per year beginning in 2012.

BACKGROUND:

In 1992, the Town agreed to lease the property located at 4500 Belt Line Road to Brinker. The property is currently occupied by a Chili's restaurant. The principle terms of the lease agreement are as follows:

- From 1992 to 1997, the Town received a minimum rent of $5,083.33 per month ($61,000 annually).
- From 1997 to 2002, the Town received a minimum rent of $5,500 per month ($66,000 annually).
- From 2002 to 2007, the Town will receive a minimum rent payment of $5,416.67 per month ($65,000 annually).
- From 2007 to 2012, the Town will receive a minimum rent payment of $5,833.33 per month ($70,000 annually).
- In addition to the minimum rents specified in the agreement, the Town also receives a percentage of gross sales less the required minimum rent payments.
- On May 19, 2012, the Town's lease agreement with Brinker Texas, L.P. will expire and the Town will take possession of any improvements made to the property.

Brinker has indicated that it plans to remodel the Chili's restaurant in 2005 to enhance the future performance and potential of the location. The remodel will include improvements to the décor, awnings, and signage. The value of these improvements has been estimated by Brinker to be approximately $275,000. Prior to making this investment, Brinker has requested that the Town amend the agreement by adding three successive five-year lease options. The proposed terms of the lease extension options would be as follows:

- From 2012 to 2017, the Town will receive a minimum rent payment of $10,000 per month ($120,000 annually).
- From 2017 to 2022, the Town will receive a minimum rent payment of $11,000 per month ($132,000 annually).

- From 2022 to 2027, the Town will receive a minimum rent payment of $12,083.33 per month ($145,000 annually).
- In addition to the minimum rents specified in the agreement, the Town will also receive 3% of gross sales less the required minimum rent payments.
- The terms of the proposed lease extension are contingent upon Brinker completing a remodel of the location.

When drafting the proposed agreement, staff engaged the John T. Evans Company to evaluate the proposed lease rates. They determined that the fair market rent in 2012 will be approximately $145,000 annually. This level of compensation can be obtained by increasing the base rent, or by increasing the percentage of gross sales received. After discussing this issue with Town staff, Brinker has indicated that it prefers to increase the base rent to $120,000. As such, the percentage rent is proposed to remain unchanged at 3% for the duration of the lease.

While the fair market rent is $25,000 more per year than the proposed agreement, staff believes that the national recognition of the Chili's brand is preferable to that of other potential tenants. In addition, Brinker is committed to enhancing the image and performance of the current location. The combination of these factors should bode well for both the Chili's location and the long-term viability of nearby businesses. As such, staff recommends approval of the lease extensions.

RECOMMENDATION:

Staff recommends approval of the three additional five-year lease extension options with Brinker Texas, L.P.

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "**Amendment**"), dated _____, 2005, is between the TOWN OF ADDISON, TEXAS, a Texas municipality ("**Landlord**"), and BRINKER TEXAS, L.P., a Texas limited partnership ("**Tenant**").

Recitals:

A. Landlord and Tenant's predecessor in interest, Chili's, Inc., a Texas corporation, as tenant, are parties to the Lease dated November 7, 1991 (as assigned, the "**Lease**") (a true and correct copy of which is attached hereto as **Exhibit A**), as confirmed by the Commencement and Termination Agreement dated September 8, 1992 (a true and correct copy of which is attached hereto as **Exhibit B**) for certain real property (the "**Premises**") located at 4500 Belt Line Road, in the Town of Addison, Texas.

B. Landlord and Tenant desire to add renewal options to the Lease as provided in this Amendment.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. **Interpretation.** Except as hereby amended, the Lease shall remain in full force and effect, and, as hereby amended, is hereby ratified and confirmed. Any capitalized term used herein and not defined shall have the same meaning as the like term used in the Lease. Both parties covenant and warrant that all approvals, if any, that may be required by third parties to amend this Lease, including lenders, has been obtained. In the event of a discrepancy between the terms of this Amendment and the Lease, the terms and provisions of this Amendment shall prevail.

2. **Interior Improvements.** Tenant is undertaking a refurbishment program for Chili's Grill & Bar restaurants opened in the late 1980's and early 1990's. The Chili's restaurant located on the Premises is included in this program. Prior to August 1, 2006, Tenant, at Tenant's sole cost and expense, shall refurbish the Premises substantially in accordance with plans and specifications dated October 29, 2004, and identified as Project No. 041617.007. In connection with such refurbishment, Tenant shall expend a minimum of $275,000.00 in actual building and construction costs (i.e., exclusive of design and other soft costs) and shall present written evidence to Landlord (to Landlord's reasonable satisfaction) of such expenditure. Such evidence shall include, among other things, true and correct copies of receipts or other documents or records showing the nature of the construction work performed, the cost thereof, and the amount paid for the same. Any and all refurbishment or other changes to the Premises shall be subject to and in accordance with all applicable laws, ordinances, rules, codes, and regulations.

3. **First, Second and Third Extension Terms.** The Term of the Lease is currently scheduled to expire on May 19, 2012 (subject, however, to the termination provisions of the Lease). Subject to the terms and conditions set forth herein, Landlord

hereby grants Tenant three additional options to extend the Lease Term for successive five-year extension terms (the "First Extension Term", the "Second Extension Term" and the "Third Extension Term", respectively) on the following terms:

a. The First Extension Term

i. The execution of this Amendment shall evidence Tenant's exercise of the First Extension Term, subject to the terms of **Subparagraph d** below. The First Extension Term shall commence, if at all, on May 20, 2012, and shall expire on May 19, 2017 (subject, however, to the termination provisions of the Lease).

ii. All terms and conditions of the Lease shall continue to apply during the First Extension Term except that Minimum Annual Rent shall be $120,000.00, payable in equal monthly installments of $10,000.00, and the Percentage Rental Rate shall be three percent (3%) for each Fiscal Year over a breakpoint calculated as stated in **Paragraph 3.2** of the Lease.

b. The Second Extension Term

i. Provided (a) this Amendment is not rendered null, void and of no further force and effect in accordance with **Subparagraph d** below, (b) Tenant has exercised its right to extend the Term of the Lease for the First Extension Term as evidenced by the execution of this Amendment, and (c) Tenant is not at the time of the exercise of the option described in this **Paragraph 3.b.** in default of the Lease and no condition then exists which, with the passage of time or the giving of notice or both, would constitute a default by Tenant under the Lease, Tenant may exercise its option with respect to the Second Extension Term by giving Landlord (by overnight courier to Landlord) written notice of the exercise of the option not earlier than November 1, 2015 nor later than 5:00 p.m. on November 1, 2016, time being of the essence.

ii. The Second Extension Term shall commence, if at all, on May 20, 2017, and shall expire on May 19, 2022 (subject, however, to the termination provisions of the Lease).

iii. All terms and conditions of the Lease shall continue to apply during the Second Extension Term except that Minimum Annual Rent shall be $132,000.00, payable in equal monthly installments of $11,000.00, and the Percentage Rental Rate shall be three percent (3%) for each Fiscal Year over a breakpoint calculated as stated in **Paragraph 3.2** of the Lease.

iv. If Tenant fails to exercise the option described in this **Paragraph 3.b.** in accordance with the terms hereof, then such option shall automatically and immediately terminate without notice, and the Lease shall

expire on May 19, 2017 (subject, however, to the termination provisions of the Lease).

c. The Third Extension Term

i. Provided (a) this Amendment is not rendered null, void and of no further force and effect in accordance with **Subparagraph d** below, and (b) Tenant has exercised its right to extend the Term of the Lease for the First Extension Term and the Second Extension Term, and (c) Tenant is not at the time of the exercise of the option described in this **Paragraph 3.c.** in default of the Lease and no condition then exists which, with the passage of time or the giving of notice or both, would constitute a default by Tenant under the Lease, Tenant may exercise its option with respect to the Third Extension Term by giving Landlord (by overnight courier to Landlord) written notice of the exercise of the option not earlier than November 1, 2020 nor later than 5:00 p.m. on November 1, 2021, time being of the essence.

ii. The Third Extension Term shall commence, if at all, on May 20, 2022, and shall expire on May 19, 2027 (subject, however, to the termination provisions of the Lease).

iii. All terms and conditions of the Lease shall continue to apply during the Third Extension Term except that Minimum Annual Rent shall be $145,000.00, payable in equal monthly installments of $12,083.33, and the Percentage Rental Rate shall be three percent (3%) for each Fiscal Year over a breakpoint calculated as stated in Paragraph 3.2 of the Lease.

iv. If Tenant fails to exercise the option described in this **Paragraph 3.c.** in accordance with the terms hereof, then such option shall automatically and immediately terminate without notice, and the Lease shall expire on May 19, 2022 (subject, however, to the termination provisions of the Lease).

d. Condition Precedent for the Amendment. Notwithstanding anything to the contrary contained in **Paragraph 3a** above, if by or before 5:00 p.m. on August 1, 2006 (i) the work described in **Paragraph 2** above is not complete, (ii) written evidence of the cost of such work has not been provided to Landlord in accordance with **Paragraph 2**, and (iii) a certificate of occupancy (or such other permit, if any, and as may be required relating to the use or occupancy of the Premises) regarding the work and the Premises has not been issued by the Town of Addison (or other governmental entity with jurisdiction over the Premises), then this Amendment shall be null, void, and of no further force and effect, and the Term of the Lease shall expire on May 19, 2012 (subject, however, to the termination provisions of the Lease).

4. **Notices.** The address for the delivery of any notice to be given to the Landlord hereunder is as follows (but Landlord party may change this address by written notice to Tenant):

Town of Addison, Texas
5300 Belt Line Road
Dallas Texas 75254-7606
Attention: City Manager

5. **Incorporation of Recitals.** The above and foregoing recitals are true and correct and incorporated herein and made a part of this Amendment.

Landlord and Tenant hereby execute and deliver this First Amendment to Lease as of the date stated in the first paragraph above.

LANDLORD:

THE TOWN OF ADDISON

By:_____
Name:_____
Title:_____

Date: January ___, 2005

TENANT:

BRINKER TEXAS , L.P.,
a Texas limited partnership

By: Brinker Chili's Texas, Inc., a Delaware corporation, its general partner

By:_____
Jay L. Tobin
Vice President

Date: January ___, 2005

Exhibit A

L E A S E

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

This Lease (hereinafter referred to as "Lease" or "Agreement") made and entered into on this 7th day of November, 1991, by and between THE TOWN OF ADDISON, a Texas municipality, hereinafter called "Landlord," and CHILI'S, INC., a Texas corporation, hereinafter called "Tenant," which provides as follows:

SECTION 1. GRANT OF LEASE AND TERM

1.1 Landlord does hereby lease and demise unto Tenant that certain real property in the Town of Addison, Dallas County, Texas, as shown in Exhibit "A" attached hereto with the property being leased identified as the cross-hatched area in Exhibit "A" attached hereto (hereinafter referred to as the "leased premises" or "premises"). The property shown on Exhibit "A" is the property of Landlord and is intended for future use as a municipal development. This Lease shall be for a term of twenty (20) years (the "Initial Term") to begin on the "Commencement Date" as defined in Paragraph 5.6 hereof. The term "Lease Year" shall be the one (1) year period to begin on the Commencement Date for each such respective year.

SECTION 2. HOLDOVER

2.1 If Tenant remains in possession of the premises after expiration of any lease term without executing a new lease or exercising its option to extend, such holding over shall be construed as a tenancy from month-to-month, subject to all covenants and conditions of this Lease, except that rental shall be at one hundred fifty percent (150%) of the then current minimum rent. Upon such holding over, Tenant must vacate the premises within thirty (30) days after receiving written notice from Landlord to vacate.

SECTION 3. RENT

3.1 The Minimum Rent for this Lease during the Initial Term and extension periods shall be payable in monthly installments, with each installment payable in advance on or before the first day of each calendar month during the Initial Term. The amount of Minimum Rent to be paid by Tenant to Landlord shall be pursuant to the following:

(a) for the first five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Eighty-three and 33/100 Dollars ($5,083.33).

effective 6/1/97 (b) for the second five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Five Hundred and No/100 Dollars ($5,500.00).

effective 5/20/2002 (c) for the third five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Four Hundred Sixteen and 67/100 Dollars ($5,416.67).

(d) for the fourth five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars ($5,833.33).

3.2 In addition to the Minimum Rent specified in Paragraph 3.1, Tenant shall pay to Landlord, for each Fiscal Year during the remainder portion of this Lease and any extension periods, percentage rental determined by multiplying the Percentage Rental Rate times the total Gross Sales made in or from the leased premises during the particular Fiscal Year and then subtracting from the product thus obtained the Minimum Rent paid by Tenant to Landlord for such Fiscal Year. The Percentage Rental Rate shall be two and one-half percent (2.5%) for each fiscal year beginning before June 30, 2001 and three percent (3.0%) for each Fiscal Year of the term of this Lease beginning after June 30, 2001.

Within thirty (30) days after the close of a Fiscal Year, Tenant shall furnish to Landlord a sales report certified to be correct by an officer of Tenant, and if the sales disclosed thereby are sufficient to require a payment under this Paragraph such payment shall accompany the report.

The term "Gross Sales" as used herein shall be construed to include the entire amount of the sales price, whether cash or otherwise, of all sales of merchandise (including gift and merchandise certificates); services and other receipts whatsoever of all business conducted in or from the leased premises, including mail or telephone orders received or filled at the leased premises; deposits not refunded to purchasers; orders taken, although said orders may be filled elsewhere; sales by any sublessee, concessionaire or licensee or otherwise in the leased premises. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant receives payment from its customer. Gross sales shall not include, however, bona fide credits, and any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, sales to employees, nor shall it include complimentary sales, nor shall it include the exchange of merchandise between the stores of Tenant, if any such exchanges are made solely for the convenient operation of the business of Tenant and not for the purpose of

consummating a sale which has therefore been made in or from the leased premises and/or for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the leased premises, nor the amount of returns to shippers or manufacturers, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant, nor sales of Tenant's fixtures, furniture, and equipment.

The sales reports shall be certified to be correct by an officer of Tenant. In the event Landlord is not satisfied with the statements of gross sales submitted by Tenant, Landlord shall have the right to have an independent Certified Public Accountant make a special audit of all books and records, which shall be located in Dallas County, Texas, pertaining to sales made in and from the leased premises; provided, however, said audit shall be limited to one time with respect to each Lease Year and must be conducted within two (2) years after the end of a Lease Year. Tenant shall have the right to submit any additional information as it may believe pertinent to any audit. If such audit discloses that Tenant understated Gross Sales by more than two percent (2.0%) over the amount submitted by Tenant, Tenant shall pay the reasonable costs for such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

3.3 Each installment of rent shall be payable to:

Town of Addison
P. O. Box 144
Addison, TX 75001

Attn: Finance Director

or at such other place as the Landlord may from time to time designate in writing.

3.4 If the Commencement Date as defined herein is not on the first day of a calendar month, the Minimum Rent for the period between the Commencement Date and first day of the next succeeding calendar month shall be apportioned at the monthly rental set forth above, and the amount so apportioned shall be payable on the Commencement Date. Likewise, the Minimum Rent for the period between the first day of the last calendar month during the term and ending date of the Lease shall be apportioned at the then current monthly Minimum Rent.

SECTION 4. FORCE MAJEURE

4.1 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, such party shall not be liable or responsible for, and therefore shall be excluded from the computation of any such period of time, any delays due to

strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the respective party.

SECTION 5. IMPROVEMENTS

5.1 Tenant shall have the right during the term of this Lease, to erect, maintain, alter, remodel, reconstruct, rebuild and replace buildings and other improvements on the Leased Premises, subject to the following general conditions:

(a) The cost of any such work shall be borne and paid for by Tenant.

(b) The Leased Premises shall be, at all times, kept free of all mechanic's and materialman's liens except that Tenant may post a bond for the payment of any disputed claims.

(c) Landlord shall be notified of the time of commencement and the general nature of any work in excess of $50,000.00 at the time of commencement.

(d) Nothing contained herein shall constitute Landlord's approval for purposes of obtaining building permits and Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications or that they comply with applicable building and fire codes.

(e) Upon termination of this Lease for any reason, all present and future installations, alterations, additions or improvements made in, on or to the leased premises, by any party, shall be deemed the property of Landlord and shall remain upon and be surrendered with the leased premises as a part thereof.

5.2 Tenant, at its sole cost and expense, shall bring all necessary utilities to the property.

5.3 Tenant, at its sole cost, shall obtain within twenty-one (21) days after the date of this Agreement a current topographical survey of the leased premises by a registered surveyor. The survey shall be staked and pinned on the ground and shall show all buildings, other improvements, easements (including public recording information), encroachments, restrictions, rights-of-way, sidewalks, highway, streets, roads, and utilities serving the

property indicating size and location. The survey shall also contain a description of the easements granted under this Lease.

5.4 The improvements referred to in Paragraph 5.1 above shall not be deemed to include any machinery, equipment, trade fixtures, signs, furniture, furnishings, decorations, restaurant equipment, shelving, showcases, mirrors, pictures, art objects, antique items, decorative light fixtures, mantles, and stained glass windows, or other similar items which may be installed, located or placed in the building by Tenant (whether "attached" to the building or not), and such items may be removed by Tenant from time to time in Tenant's sole discretion during this Lease and for a period of fifteen (15) days after termination of this Lease. Tenant shall repair the premises resulting from any damages caused by the removal of such items. Tenant may finance or refinance all or any part of its machinery, equipment, trade fixtures, signs, and other items listed above and in connection therewith may grant security interests in and liens upon such items, provided that Tenant shall not grant or place any liens upon the realty comprising the demised premises or Landlord's interests therein. Landlord hereby expressly waives any liens, constitutional, statutory or otherwise, which Landlord may have with respect to any such items, and Landlord will execute and deliver or cause to be executed and delivered such evidence of this waiver of lien as Tenant's equipment lender or lessor may request from time to time. The term "improvement" referred to in paragraph 5.1 shall include, but not be limited to, air conditioning, heating and ventilation systems, water heaters, plumbing apparatuses and other fixtures. The terms "machinery and equipment" used in this paragraph and other provisions of this Lease shall not include such improvements.

5.5(a) The parties hereto agree that this Lease is entirely contingent upon the leased premises being suitable for the restaurant Tenant intends to construct upon the demised premises. Consequently, notwithstanding anything to the contrary herein set forth, this Lease shall be null and void and neither party shall be under any obligation or liability one to the other, in the event the Tenant in its sole judgment determines that for economic or other reasons the premises are not suitable for its restaurant or for the construction of its improvements and/or that it cannot obtain all permits necessary to construct and operate its intended restaurant, such permits and approvals specifically including, but not limited to, liquor licenses, sign permits, access points, and building construction permits. Tenant shall have sixty (60) days in which to inspect the leased premises and give written notice to Landlord that Tenant has determined that, in its judgment, the leased premises are not suitable for the restaurant it intends to construct and in such event this Lease shall terminate and neither party shall have any liability to the other. If Tenant shall not give the notice of termination within such sixty (60) days, the Tenant shall have waived its right to terminate pursuant to this paragraph 5.5(a). As a part of Tenant's inspection, Tenant and its engineering consultants shall be permitted to come upon the leased premises to perform soil tests.

inspections, and other studies, to be used by Tenant in determining feasibility of construction and to determine the environmental conditions of the premises and existing improvements. Tenant shall restore the premises to its condition prior to any such tests, and shall indemnify and hold Landlord harmless from any liens that may arise as a result thereof and for any damages to persons or property.

(b) Tenant shall have one hundred twenty (120) days from the date of this Agreement hereof in order to give written notice to Landlord that the necessary permits are not obtainable and in such event this Lease shall terminate and neither party shall have any liability to the other. Tenant shall apply for its building and zoning permits within sixty (60) days from the date of this Agreement. If Tenant shall not give the notice of termination within such one hundred twenty (120) days, the Tenant shall have waived its right to terminate pursuant to this paragraph 5.5(b).

5.6 If this Lease is not terminated as provided in paragraph 5.5 above, Tenant shall enter the premises and commence the construction of its improvements, and the rental hereunder shall commence upon the earlier of:

(1) the date Tenant first opens for business on the premises to the public; or

(b) one hundred fifty (150) days from the earlier date of: (i) Tenant's waiver of its right to terminate pursuant to Paragraph 5.5(b) hereof; or (ii) the issuance of all permits necessary to construct the restaurant.

5.7 Tenant and persons, firms or corporations involved in the erection of building contemplated herein and Tenant's subtenants, employees, agents, servants, patrons, and suppliers may enter upon and work in said premises during the period prior to the "Commencement Date." and all covenants and conditions of this Lease shall be applicable except those pertaining to rental and taxes; no rental or other monetary payments being reserved or charged for such period prior to the "Commencement Date." Tenant shall hold Landlord harmless from any lien or claims for liens as a result of Tenant's action during such period.

SECTION 6. STATE OF THE TITLE, ZONING AND RESTRICTIONS

Landlord hereby warrants and represents to Tenant as follows:

6.1 Landlord is owner of the Leased Premises and authorized to execute this Lease. Tenant acknowledges that the Leased Premises are not zoned to permit construction of a restaurant serving alcoholic beverages, and Tenant agrees, at its sole cost and expense, to obtain such zoning.

6.2 No person other than Landlord has the right to lease the leased premises.

6.3 Landlord agrees that it has not and will not hereafter enter into or consent to any restrictive covenant or similar agreement substantially or materially affecting Tenant's use of the leased premises, except Landlord reserves the right to enter into a mutual reciprocal parking and access agreement with the Tenant on Landlord's adjacent property.

6.4 Tenant, within twenty-one (21) days following the date of this Agreement, shall obtain a Commitment for leasehold title policy applicable to the leased premises from a licensed Title Company (the "Title Company") and any easements serving the leased premises. Tenant shall have twenty-one (21) days thereafter in which to have the Commitment examined and to furnish Landlord notice in writing of any objections thereof. In case of valid objections to the title, Landlord shall have twenty-one (21) days within which to satisfy said objections, unless such time be extended by written agreement between the Landlord and Tenant. Landlord warrants that it shall, in good faith, exercise due diligence to cure title defects, if any, within the time provided, but such obligation shall not exceed $1,000.00. In the event there is now or shall be in the future a Mortgage or Deed of Trust on the leased premises, Landlord shall provide a Non-Disturbance Agreement to Tenant in such form as Tenant may reasonably require. If there is a current Mortgage or Deed of Trust, Landlord shall deliver a Non-Disturbance Agreement within thirty (30) days after Tenant's receipt of the Title Commitment.

SECTION 7. USE BY TENANT

7.1 The leased premises shall be used for the operation of a restaurant with alcoholic beverage service or retail/service business. Tenant shall not commit waste on the leased premises, shall not maintain, commit or permit the maintenance or commission of a nuisance or lewd or indecent activities on the leased premises, or use all or part of the premises for any use or purpose in violation of any valid or applicable law, regulation or ordinance of the United States, State of Texas, Town of Addison, or other lawful governmental authority having jurisdiction over the leased premises. Tenant shall conform to all applicable laws and ordinances respecting the use and occupancy of the leased premises. In no event shall the leased premises be used or occupied by any business which Gross Sales shall exceed forty percent (40%) from alcoholic beverages in any calendar year and Landlord shall be entitled to review Tenant's filings with state agencies to confirm such percentage of liquor sales. Tenant shall not conduct within the leased premises any fire auction, going-out-of-business or bankruptcy sale. Tenant shall not permit any objectionable or unpleasant odors to emanate from the leased premises other than normal restaurant odors; nor place or permit any radio, television, loud speaker, amplifier or sound system or signs or devices emitting flashing lights, loud noises or vibrations on the roof or

outside the leased premises.

7.2 Tenant shall maintain its improvements in a neat and clean condition, shall keep sidewalks on the premises clean and free from rubbish, and shall arrange for the regular pick up of trash and garbage if such service is not provided by the City or County in which the leased premises are located. Tenant shall not permit rubbish, refuse, or garbage to accumulate or any fire or health hazard to exist about the premises, so long as this Lease is in effect and during any extension thereof. Trash and garbage dumpsters shall be screened from view.

7.3 During the first five (5) years of the original term of this Lease, Tenant shall in good faith continuously conduct and carry out in the entire Demised Premises the type of business described in Section 7.2 above except for periods resulting from fire or other casualty, or reasonable periods for repairs and alterations, all such repairs and alterations to be diligently pursued to completion. Beginning in the sixth (6th) year of the original term of this Lease, if Tenant discontinues the operation of its business or vacates the Demised Premises for any continuous twelve (12) month period (other than as a result of fire or other casualty, for substantial restoration or alteration, such restoration, alterations or repairs to be diligently pursued to completion), Landlord may terminate this Lease and repossess the Demised Premises. Upon repossession, this Lease will terminate and neither party shall have any further obligation to the other except for the following:

Tenant shall forfeit all of Tenant's permanent improvements to the Demised Premises, but may remove its furniture, fixtures, equipment and all signs.

Landlord shall pay to Tenant at the termination date the unamortized value of its building and permanent improvements based upon a 20-year straight line basis from the Commencement Date.

7.4 Tenant shall procure, at its own expense, any permits and licenses required for the transaction of business on the leased premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

SECTION 8. MAINTENANCE, REPAIRS AND UTILITIES

8.1 At all times during the term of this Lease, Tenant will keep and maintain, or cause to be kept or maintained, all buildings and improvements which may be erected on the Leased Premises in a good state of appearance and repair, reasonable wear and tear and loss by casualty excepted, at Tenant's own expense. Tenant, at Tenant's expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other

agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Leased Premises.

8.2 Tenant shall, at its own cost and expense, pay all charges when due for water, gas, electricity, heat, sewer rentals or charges and any other utility charges incurred by Tenant in the construction and the use of the premises, unless caused by Landlord's negligence or misconduct, Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas, electric current for light and power, or telephone.

SECTION 9. ASSIGNMENT AND SUBLETTING

9.1 Tenant shall have the right to assign or sublease the leased premises to any corporation controlling, controlled by or under common control with Tenant, to any corporation with which Tenant merges or consolidates, to any franchisee of Tenant or to any person or entity acquiring all or substantially all of the assets of Tenant. Any other assignment or subletting of this Lease or leased premises by Tenant shall require the prior written consent of Landlord, which consent shall not be unreasonably withheld.

9.2 It is specifically understood that any assignment by Tenant consented to by Landlord allowed in accordance with this section shall be only for the permitted use and for no other purpose. If Landlord consents to the assignment, or the assignment is permitted in accordance with this section, the permitted transferee shall assume by written instrument all of Tenant's obligations under the Lease. In the event of a permitted assignment, Tenant shall continue to be liable hereunder provided Landlord shall give Tenant written notice of any default following the default of any assignee or sublessee and Tenant shall have a period of thirty (30) days to cure any such default. Any transfer without Landlord's consent shall not be binding upon Landlord, and shall confer no rights upon any third party. Each such unpermitted transfer shall, without notice or grace period for any kind, constitute a default by Tenant under this Lease. Consent by Landlord to any one transfer shall not constitute a waiver of the requirement for consent to any other transfer. No reference in this Lease to assignee, concessionaires, subtenants or licensees shall be deemed to be consent by Landlord to the occupancy of the Leased Premises by any such assignee, concessionaire, subtenant or licensee.

SECTION 10. SIGNS AND DISPLAYS

10.1 Provided appropriate governmental consent shall be obtained, Tenant shall have the right at its own cost and expense to erect and maintain a sign or signs advertising its business and such signs may be displayed and placed either by freestanding or Pylon signs. Tenant shall also have the right to attach or paint

signs on the building. All signs erected by Tenant shall be in compliance with the applicable laws or within a non-conforming use exception allowed by law, and all such signs may be removed by Tenant at any time during or within thirty (30) days after the expiration of this Lease. Tenant shall not place or permit to be placed on the exterior of the leased premises, on the door, window or roof thereof, in any display window space, or within five (5) feet behind the storefront of the leased premises if visible from the outside, any sign, placard, decoration, lettering, advertising matter of descriptive material without Landlord's written approval. All signs installed by Tenant shall be insured, and shall be maintained by Tenant at all times in first-class condition, operating order and repair. Tenant shall commence to repair any of Tenant's signs which have been damaged within ten (10) days after such damage occurs.

SECTION 11. INSURANCE AND TAXES

11.1 At all times during the term of this Lease, Tenant shall keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. The insurance shall be Paid for by Tenant and shall be in amounts not less than ninety percent (90%) of the fair insurable value of the buildings and other improvements. Such policy or policies of insurance shall name both Landlord and Tenant as named insured. In the event Chili's Inc. or its corporate affiliate shall not be the tenant occupying the leased premises because of assignment, sublease, or other cause, the policy shall provide that any loss of $75,000.00 or less shall be payable solely to Tenant, which sum Tenant shall use for repair and restoration purposes; and any loss over $75,000 shall be made payable jointly to Landlord and Tenant as their interest may appear and shall be for the purpose of rebuilding and repairing the improvements on the leased premises.

11.2 At all times during the term of this Lease, Tenant shall provide and keep in force during the term of this Lease, liability insurance covering Landlord and Tenant for liability for property damage and personal injury. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. Landlord shall be named as an additional named insured. The insurance provided shall be a comprehensive general liability insurance with a broad form comprehensive general liability with endorsement applicable to the leased premises and the buildings and improvements located thereon and providing coverage which will pay on behalf of any named or additional named insured all sums which such named and/or additional named insureds shall be liable to pay as damages due to bodily injury (including death) or property damage. The maximum limit of liability of such insurance shall be no less than $1,000,000 for bodily injury (or

death) to any one person, $1,000,000 for bodily injury (or death) to more than one person and $500,000 for property damage, or in lieu thereof, $1,000,000 combined single limit. The public liability insurance shall include, at the same minimum limits of liability as shown above, liquor legal liability coverage.

11.3 Before any alteration, addition, improvements or construction may be undertaken by or on behalf of Tenant, Tenant shall obtain, carry and maintain, at its expense, or Tenant shall require any contractor performing work on the leased premises to obtain, carry and maintain Builders' Risk Insurance in the amount of the replacement cost of the improvements and buildings and Comprehensive General Liability Insurance (including, without limitation, Contractors' Liability Coverage, Contractual Liability Coverage, Completed Operation Coverage, a broad form Property Damage Endorsement and Contractors' Protective Liability Endorsement) providing on an occurrence basis a minimum combined single limit of $1,000,000.

11.4 Tenant shall furnish Landlord with certificates of all insurance required by this section. Tenant agrees that if it does not keep this insurance in full force and effect, Landlord may notify Tenant of this failure, and if Tenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within ten (10) days after Tenant's receipt of such notice, Landlord may, at its option, taken out and/or pay the premiums on insurance needed to fulfill Tenant's obligation under the provision of this section. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premium paid by Landlord, pursuant to this section, with interest at the rate of ten percent (10%) per annum from date of Landlord's demand until reimbursement by Tenant. Furthermore, the required certificate of insurance shall provide that Landlord will receive at least fifteen (15) days' written notice prior to cancellation or reduction of any such insurance policy.

11.5 Landlord shall cause the leased premises to be separately assessed and taxed by applicable governmental authorities and Tenant shall pay before they become delinquent all real estate, if any, and personal property taxes and special assessments lawfully levied or assessed against the leased premises and contents thereof. For the lease years for which this Lease commences and terminates the provisions of this section shall apply and Tenant's liability for its proportionate share of any taxes and assessments for any such year shall be subject to a pro rata adjustment based on the number of days of any such year during the term of this Lease. Tenant shall furnish to Landlord evidence that such taxes have been paid upon Landlord's written request. Tenant may, in good faith, contest any such taxes provided it pays any and all taxes finally adjudicated against the leased premises.

SECTION 12. DAMAGE OF DESTRUCTION BY FIRE, WAR OR ACTS OF GOD

12.1 If the building upon the leased premises is destroyed or substantially damaged by fire, acts of God, other peril covered by in fire and extended coverage insurance (including earthquake), or war ("war" included enemy aggression, civil riot or commotion, and insurrection) and shall require more than $100,000 to rebuild or repair such, Tenant may notify Landlord that it desires that the improvements be repaired and/or rebuilt, such notice to be given in writing within thirty (30) days of such destruction or damage. If such notice is given, Tenant shall promptly proceed to carry out and accomplish such repair or rebuilding (taking into consideration the problems, difficulties and delays in obtaining the insurance proceeds), and all insurance proceeds received or arising from such destruction or damage shall be paid to Tenant for use in such repair or rebuilding except as provided in Section 11.1. If such notice is given, the rent shall abate from the time of such destruction or damage until the improvements are rebuilt or repaired and Tenant has reopened for business, but such period of abatement of rental shall not exceed one hundred twenty (120) days. If such notice of desire for repair and/or rebuilding is not given by Tenant within said thirty (30) days, this Lease shall terminate automatically and the rent shall abate from the time of such destruction or damages and the insurance proceeds from the loss of the building shall be paid to Landlord. The insurance proceeds for loss of furniture, equipment and personalty items shall be paid to Tenant.

12.2 If the building may be repaired for less than $100,000 to substantially the same condition, Tenant shall not have the option to terminate and Tenant shall proceed to repair and rebuild the damage without unreasonable delay, taking into account the problems, difficulties and delays attending the obtaining of the proceeds of the insurance coverage which shall be paid to Tenant. and if during such period the building is found to be partially untenantable or inconvenient, the rent payable hereunder during such period shall be adjusted downward to such extent as may be fair and reasonable under the existing circumstances.

SECTION 13. INDEMNIFICATION COVENANTS

13.1 Tenant shall indemnify, defend and hold Landlord, its officers, employees, officials and agents (collectively the "Indemnitees") harmless from and against all liabilities. obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architect's and attorney's fees, which may be imposed upon, incurred by, or asserted against any of the Indemnitees and arising, directly or indirectly, out of or in connection with the use or occupancy of the leased premises by, through or under Tenant, and (without limiting the generality of the foregoing) any of the following:

(a) Any work or thing done in, on or about the leased premises or any part thereof by Tenant or any of its concessionaires, agents, contractors, employees or invitees;

(b) Any use, nonuse, possession, occupation, condition, operation, holdover occupancy, maintenance or management of the leased premises or any part thereof by Tenant;

(c) Any injury or damage to any person or property occurring in, on or about the leased premises or any part thereof caused by Tenant's negligence or misconduct; or

(d) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease with which Tenant, on its part, must comply or perform unless prevented so by the acts of Landlord or force majeure.

In case any action or proceeding is brought against any of the Indemnitees by reason of any of the foregoing, Tenant shall, at Tenant's sole cost and expense, resist or defend such action or proceeding.

Except for the negligence of Tenant, its agents or employees, Tenant shall not be liable for any damage or injury to any property or persons which might occur on property owned or leased by Landlord adjacent to the leased premises. The Landlord shall indemnify, defend and hold harmless Tenant, its officers, employees and agents from any claim, liability or damages (including reasonable attorney's fees and expense) incurred by Tenant which result from any work or thing done in, on or about the Landlord's adjacent property.

SECTION 14. WAIVER OF SUBROGATION

14.1 Landlord and Tenant each hereby waive on benalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto through subrogation or otherwise) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees. for any loss or damage that may occur to the leased premises or any improvements thereto or any personal property therein, by reason of fire, the elements or any other cause, which are insured against by the terms of a standard fire and extended coverage insurance policy, regardless of the cause or origin of the damage involved, including negligence of the other party hereto. its agents. officers, or employees and regardless of the amount of the deductible. This release shall not be limited to the liability of the parties to each other. It shall also apply to any liability

to any person claiming through or under the parties pursuant to a right of subrogation or otherwise. This release shall apply even if the loss or damage shall have been caused by the fault or negligence of Tenant or Landlord or any person for whom Tenant or Landlord may be responsible. Each party shall cause its policies with its insurers to provide for the waiver of subrogation as set forth herein.

SECTION 15. LANDLORD'S RIGHT TO INSPECT

15.1 Landlord expressly reserves the right to enter the premises at reasonable times and upon reasonable notice to Tenant during business hours and in a manner so as not to disturb Tenant's business to inspect or examine the improvements, except that Landlord may enter the premises at any time and without notice in the legitimate exercise of its police powers.

SECTION 16. SUBORDINATION

16.1 This Lease shall be subject and subordinate at all times to the lien of any Deed of Trust or mortgages now on the premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any Deed of Trust or mortgage or mortgages which at any time may hereafter be made a lien upon the premises by Landlord; provided however, that such subjection and subordination is upon the express condition that this Lease shall be recognized by the mortgagee and that all the rights of the Tenant shall remain in full force and effect during the full term of this Lease on condition that the Tenant shall not be in default pursuant to the terms of this Lease and further provided that in the event of foreclosure or any enforcement of any such mortgage, the right of the Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such instruments shall carry the conditions and provisions set forth above.

16.2 Tenant may, at any time and from time to time, encumber the leasehold interest, by deed of trust, mortgage or other security instrument, without obtaining the consent of Landlord, but no such encumbrance shall constitute a lien on the fee-title of Landlord, and the indebtedness by the encumbrance shall at all times be and remain inferior and subordinate to all of the conditions, covenants and obligations of this Lease and to all the rights of Landlord under this Lease.

SECTION 17. DEFAULT AND BANKRUPTCY

17.1 In the event Tenant shall fail to make any rental or other monetary payment due hereunder within seven (7) days after receipt of written notice that the same shall be due or if the Tenant shall breach or fail to perform any other agreement herein and shall fail to commence to cure such breach or to commence to

perform such agreement within thirty (30) days after written notice from the Landlord, Landlord in either such event shall have the option to:

(i) to maintain this Lease in full force and effect, whereupon Landlord shall have the right to sue for all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as the same come due; or

(ii) to terminate this Lease and repossess and retain the premises and the permanent improvements, whereupon Landlord shall have the right to recover from Tenant the present value of all Minimum Rental and other amounts to accrue under this Lease, discounted at the rate of ten percent (10%) per annum, less the cash market value of this Lease for the unexpired portion of the term; or

(iii) to terminate Tenant's right to possession of the premises without terminating this Lease, whereupon Landlord shall have the right (but not the obligation) to repossess the premises and the permanent improvements, to attempt to Lease them to another tenant, and to recover from Tenant all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as same come due and as reduced by the rental, if any, received by Landlord for the pertinent Lease period from the other tenant, if any, after recovery of all reasonable expenses incurred by Landlord in effecting any reletting of the premises; provided, however, that if Landlord elects or is deemed to have elected to proceed under this subparagraph (iii), then Landlord may at any time thereafter elect to terminate this Lease pursuant to subparagraph (ii).

The remedies provided in this section shall not be exclusive and in addition thereto the Landlord may pursue such other remedies as are provided by law in the event of any breach or default by Tenant. Landlord agrees to use its reasonable efforts to mitigate its damages.

17.2 In the event Tenant shall be adjudicated a bankrupt or insolvent or take the benefit of any reorganization or composition proceeding or insolvency law or make a voluntary assignment for the benefit of creditors or if Tenant's leasehold interest under this Lease shall be sold under any execution or process of law or if a receiver shall be appointed for Tenant and is not discharged in ninety (90) days and if after thirty (30) days additional notice to Tenant that Landlord desires to terminate this Lease such

condition is not cured or remedied, then and thereafter Landlord shall have the right and option to terminate this Lease.

17.3 If Landlord should default or fail to perform any covenant, agreement, undertaking or obligation imposed upon it in this Lease, and such default shall continue for a period of thirty (30) days after service of written notice thereof upon Landlord by Tenant, Tenant may, at its option, upon ten (10) additional days notice served upon Landlord, perform such covenant, agreement, undertaking or obligation for and on behalf of Landlord, and recover damages against Landlord for breach thereon. In addition to the above, Tenant shall have and possess and be entitled to assert all rights and remedies for such default as may then be afforded by applicable statutory or common law to enforce the lease terms, seek damages or both.

SECTION 18. CONDEMNATION

18.1 In the event the leased premises or any part thereof shall be condemned (which shall include any taking of public or quasi-public use under any statute, or by right of eminent domain, or by sale under threat of eminent domain), the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer on this Lease shall be as follows:

(a) All damages (or settlement in lieu thereof) awarded for any such taking under the power of eminent domain, whether for the whole or part of the leased premises shall be prorated between the Landlord and the Tenant in the following manner. That portion of the award which is reasonably attributable to the land shall belong to Landlord. Landlord shall not be entitled to any award made to Tenant for or reasonably attributable to loss of or damage to Tenant's trade fixtures, leasehold improvements made by Tenant, and removal of personal property or for damages for cessation and interruption of Tenant's business and leasehold estate. That portion of the award which is reasonably attributable to the building and permanent improvements shall be divided between Landlord and Tenant to the effect that Tenant shall be entitled to the unamortized value thereof based upon a twenty (20) year straight line basis from the commencement date.

(b) If the entirety of the leased premises shall be condemned, or if a portion of the leased premises shall be condemned which shall materially affect Tenant's operations in its reasonable judgment, this Lease shall

terminate, provided, however, that such termination shall be without prejudice to the respective interests of Landlord and Tenant in the condemnation award or proceeds in lieu thereof as set forth herein.

SECTION 19. ACCESS EASEMENT AND USE OF PROPERTY

19.1 Landlord hereby grants to Tenant during the term of this Lease a non-exclusive license to provide automobile access to Beltline Road over Landlord's adjacent property as shown on Exhibit "A" for the benefit of the Leased Premises. Tenant does hereby grant to Landlord and its future tenant or successor and assign a non-exclusive license to use, without charge, a portion of the Leased Premises as shown on Exhibit "A" to provide vehicular access from Belt Line Road for the benefit of the Landlord's adjacent property. The nonexclusive licenses granted herein to Tenant and Landlord shall be for the purpose of foot and vehicular ingress and egress. Landlord and Tenant shall not erect any curb or barrier between the Leased Premises and the Landlord's property which would interfere with the traffic, and shall cooperate with each other in providing reciprocal access between them. Tenant, at all times, shall maintain in good condition and repair the hard surface paving constructed on its tract and insure that ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld. Landlord agrees that if it shall lease its adjacent property to another tenant, it shall require such tenant to maintain in good condition and repair the hard surface paving constructed on its adjacent tract and insure that the ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of landlord and Tenant, which consent will not be unreasonably withheld. Prior to the leasing of the adjacent tract by Landlord, Tenant, at its sole cost, shall have the right to make the necessary improvements to the access area to allow vehicular ingress and egress to Belt Line Road across Landlord's adjacent Property.

19.2 During the term of this lease, Landlord agrees not to lease space on the property or convey any portion of the adjoining property, without Tenant's written approval, to another "hamburger theme," and/or "Mexican theme" restaurant specializing in the sale of hamburgers and/or Mexican food as the primary entrees on its menu. Landlord and Tenant agree that this exclusive use clause extends solely to a store operated by a new tenant which proposes to do business as a "hamburger theme" and/or "Mexican theme" restaurant and is not to be interpreted as awarding Tenant the exclusive right to sell hamburgers, Mexican food and Southwestern cuisine on the Landlord's property, nor to prevent the operation of any kind of restaurant by the present tenant of the adjacent property. Notwithstanding the foregoing, however, Landlord specifically agrees not to sell or lease any of the adjoining property to the operators of any of the following restaurants:

Applebee's Bennigan's, Chi Chi's, Claim Jumper's, El Torito, Flakey Jake's, Fuddrucker's, Ground Round, Houlihan's, Hudson's, Island's, Ruby Tuesday's, Spoon's, and TGI Friday's. However, should Landlord be precluded from performing under this paragraph by any governmental or judicial authority, then this paragraph will be null and void.

In no event shall the Landlord's property adjacent to the leased premises be used or occupied by any party in which over forty percent (40%) of its sales shall be of alcoholic beverages.

19.3 Landlord has advised and furnished Tenant a copy of that certain Mutual Access and Easement Agreement dated December 19, 1986, by and between Daryl N. Snadon and the Town of Addison, Texas ("Mutual Access and Easement Agreement"). Tenant does hereby agree to abide by the terms and conditions set forth in such Mutual Access and Easement Agreement, and furthermore, Tenant, during the term of this Lease, agrees to assume and perform each of the conditions and obligations imposed upon Landlord by the Mutual Access and Easement Agreement. Landlord warrants and covenants that Tenant shall be entitled to the benefits of the Mutual Access and Easement Agreement as granted to Landlord therein during the term of this Lease.

SECTION 20. AND MECHANIC'S AND MATERIALMEN'S LIENS

20.1 Tenant covenants and agrees with Landlord that from and after the date of execution hereof, Tenant will keep the leased premises free and clear of any and all mechanic's and/or materialmen's liens on account of any construction, repair, alteration or improvements which Tenant shall by virtue of the conduct of alleged conduct of Tenant, and in the event that Tenant will cause the same to be removed as against the leased premises, Tenant will cause the same to be removed as against the leased premises by posting of the necessary bond or indemnification within thirty (30) days from and after such time as said lien shall have attached to, or be asserted upon or against the leased premises. Tenant shall indemnify and hold harmless the Landlord from any and all losses or expenses arising from the discharge of any such lien that shall attach to the leased premises.

SECTION 21. ENVIRONMENTAL MATTERS

21.1 Landlord and Tenant agree to the following with respect to environmental matters.

(a) Landlord's Representation and Warranties. Landlord represents and warrants to Tenant that, to Landlord's knowledge, which shall be limited to the knowledge of the current Mayor, City Councilman and City Manager after due inquiry, (i) no hazardous substance, including, without limitation, asbestos-containing materials and electrical transformers or ballasts containing PCBs, are present, or were installed, exposed, released or discharged in, on or under the leased premises at any time during or prior to

Landlord's ownership thereof, except for the asbestos materials used in the construction of the buildings situated on the premises which has been subsequently removed, (ii) no storage tanks for gasoline or any other substance are or were located on the leased premises at any time during or prior to Landlord's ownership thereof, except as noted in the materials previously delivered to Tenant which Tenant acknowledges receipt and is identified by undated letter from Cheryl Nichols to Tom Rodgers with attachments, and (iii) the leased premises and the improvements have been used and operated in compliance with all applicable local, state and federal laws, ordinances, rules, regulations and orders, and Landlord has all permits and authorizations required for the use and operation of the leased premises.

(b) Covenants. Tenant shall at all times comply with applicable local, state and federal laws, ordinances and regulations relating to Hazardous Substances. Tenant shall at its own expense maintain in effect any permits, licenses or other governmental approvals, if any, required for Tenant's use of the premises. Tenant shall make all disclosures required of Tenant by any such laws, ordinances and regulations, and shall comply with all orders with respect to Tenants use of the premises, issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the Tenant's activities on the premises into compliance with all laws, rules, regulations and ordinances relating to hazardous substances and affecting the premises. Landlord shall make all disclosures required of Landlord by any such laws, ordinances and regulations, and shall comply with all orders issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the leased premises into compliance with all laws, rules, regulations and ordinances relating to Hazardous Substances and affecting the leased premises.

(c) Notices. If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any Hazardous Substance has been released or has otherwise come to be located on or beneath the leased Premises, such party shall, immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of a Hazardous Substance on or beneath the premises, shall immediately notify the other party in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substance laws, (ii) any claim made or threatened by any person against Landlord, Tenant, the premises and improvements arising out of or resulting from any Hazardous Substances, and (iii) any reports, made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Substance.

(d) Indemnity. Landlord shall indemnify, defend (by counsel acceptable to Tenant), protect, and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises or the improvements, or any discharge or release in or from the premises or the improvements of any Hazardous Substance, caused by Landlord or existed at the time of the Lease, except to the extent that any such presence, discharge, or release is caused by Tenant's activities on the premises, or (ii) Landlord's failure to comply with any Hazardous Substance law. Tenant shall indemnify, defend (by counsel acceptable to LandLord), protect, and hold harmless Landlord, and each of Landlord's Partners, public officials, directors, officers, employees, agents, attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises, the improvements or any discharge or release in or from the premises, the improvements of any Hazardous Substance but only to the extent that any such presence, discharge, or release is caused by Tenant's activities on the premises, or (ii) Tenant's failure to comply with any Hazardous Substance law, to the extent that compliance is required on account of Tenant's activities on the premises and not to the extent that compliance is required solely because Tenant, as the occupant of the premises, is held accountable for Hazardous Substances on, in, under, or about the leased premises, or released from the leased premises which are not caused by or released on account of Tenant's activities. The indemnity obligation created hereunder shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of the premises and improvements. The obligations of the parties hereunder shall survive the expiration or earlier termination of this Lease.

(e) Limited Indemnity. With regards to any discharges or release on the premises or the improvements of any Hazardous Substance by any third party which results in the death of or injury to any person or damage to any property whatsoever, Landlord and Tenant agree as follows:

(i) Landlord shall indemnify, defend, protect and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors and assigns, from and against any and all claims, liabilities,

penalties, fines, judgments, forfeitures, costs or expenses (including attorneys' fees, consultants' fees and expert fees) for any and all costs for cleanup, detoxification or decontamination or other remedial action on the premises.

(ii) If the building upon the leased premises is contaminated and requires Tenant to cease its business therein for a period of more than six months, Tenant shall have the option to terminate this Lease and require the Landlord to reimburse Tenant for the unamortized cost of the building, based upon a 20-year straight-line basis from the Commencement Date to the date of the incident, and Landlord shall receive all insurance proceeds, if any, relating to the building.

(iii) During the time Tenant's operations have ceased upon the leased premises due to the hazardous waste contamination, the rent shall be abated and the lease term hereof shall be extended for the number of days during which Tenant's operations have ceased.

(iv) Except for each party's respective negligence, Landlord and Tenant shall not be liable to each other for any additional costs and expenses or losses other than set forth above in the foregoing subparagraphs.

(v) Landlord shall use due diligence to remove or clean up the hazardous waste.

21.2 Hazardous Substances. As used in this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental protection Agency as hazardous substances (40 CFR Part 3D2) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law.

SECTION 22. MISCELLANEOUS

22.1 Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, so long as it is not in default of the Lease, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease and any extension or renewal thereof.

22.2 This Lease and the covenants, agreements, restrictions and conditions herein contained shall bind, and the benefits and advantages hereof shall inure to the respective heirs, legal representatives, successors and assigns of the parties hereto. This Lease shall be governed by the laws of the State in which the leased premises are located.

22.3 Whenever used the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. This instrument may be executed in counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument.

22.4 Any notice required or permitted to be served under this Lease shall be served by delivery in person or by placing the same in the United States registered or certified mail, postage and [illegible] addressed to the other party at the address set forth below or at such other address as such party may designate by notice to the other in writing:

Landlord	Tenant
Town of Addison Attn: City Manager P. O. Box 144 Addison, TX 75001	Chili's, Inc. Attn: General Counsel 6820 LBJ Freeway Dallas, TX 75240

22.5 Each party agrees that from time to time, upon not less than twenty (20) days prior written notice by the other party, it will deliver to the other party a statement in writing certifying that:

(a) The Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect).

(b) The dates to which rent and other charges have been paid.

(c) The other party is not in default under any provisions of the Lease or if in default the nature thereof in default.

(d) Any such other Lease information related to the Leased Premises as may reasonably be requested.

22.6 Each party agrees that it will, upon request of the other, execute and deliver a Memorandum of Lease in recordable form in the form of Exhibit "B" attached hereto for the purpose of giving record notice of this Lease.

22.7 Landlord and Tenant acknowledges and represents to each other that Christon Company and Jaffe, Jones & Co. have acted as broker in connection with this Lease, and that each party has had no dealings with any broker or agent other than Christon Company and Jaffe Jones & Co. Landlord has made separate agreements with Jaffe, Jones & Co. and Christon Company for payment brokers' fees and Tenant shall have no liability to Christon Company and Jaffe,

Jones & Co. for any brokerage fee. In the separate agreement between Landlord and Jaffe, Jones & Co., Landlord has agreed to pay a commission $48,000.00, which amount shall be payable as provided in the separate agreement.

22.8 The execution by Tenant of this Lease and the delivery of the same shall constitute an offer, which shall automatically expire unless counterparts of the Lease duly executed by Landlord have been delivered to Tenant on or before ten (10) days following Tenant's execution hereof.

22.9 For purposes of this Agreement, the "date of this Agreement" shall be deemed to be the latter of the dates of execution of this Agreement by Landlord and Tenant, such dates being inserted opposite the signatures of Landlord and Tenant. Such latter date shall be inserted in the preamble on page 1 of this Agreement.

22.10 If: (a) Tenant fails to make any payment currently due under this Lease after notice to Tenant and Tenant, failure to cure after seven (7) business days when due; or (b) Landlord incurs any cost or expense as a result of Tenant's default under the Lease, then Tenant shall pay, upon demand, interest from the date such payment was due or from the date Landlord incurred such cost or expenses relating to the performance of any such obligation or Tenant's default, as the case may be, plus the payment due under (a), or the amount of such reasonable cost and expenses incurred under (b). Failure to insist upon payment on any one or more instances shall not constitute a waiver, and it is understood that is an addition to any other express charges provided for in this Lease. The term "Interest" shall mean interest a the rate of ten percent (10%) per annum.

22.11 If any action or proceeding is commenced in which either party intervenes or is made a party by reason of being party under this Lease, or if either party shall deem it necessary to engage an attorney to institute any suit against the other in connection with the enforcement of and its rights under the Lease, then the prevailing party shall be entitled to reimbursement from the other party for it reasonable expenses incurred as a result thereof, including without limitation, court costs and reasonable attorneys fees.

22.12 If any action or proceeding is commenced in which either party intervenes or is made a party by reason of being a party under this Lease, or if either party shall deem it necessary to engage an attorney to institute any suit against the other in connection with the enforcement of and its rights under the Lease, then the prevailing party shall be entitled to reimbursement from the other party for its reasonable expenses incurred as a result thereof, including without limitation, court costs and reasonable attorneys' fees.

LANDLORD:

TOWN OF ADDISON

Date: 11-7-91

By: _____

Its: Mayor

_____

1-15-92

Acting City Manager

TENANT:

CHILI'S, INC.

Date: 12/17/91

By: _____

Ronald A. McDougall

Its: President and Chief Operating Officer

EXHIBIT A

Premises

PROPERTY DESCRIPTION

BEING a tract of land situated in the Elisha Pike Survey, Abstract No. 478, Dallas County, Texas, and being that certain tract of land conveyed to the City of Addison by deed dated October 4, 1971, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a cross cut found for corner situated in the south line of Belt Line Road (100' R.O.W.), said cross being S 89°58'38" W a distance of [illegible] from the west line of Beltway Drive;

THENCE S 00°01'34" E departing the south line of said Belt Line Road and along the west line of Beltway Office Park Tract III, an addition to the City of Addison as recorded in Volume [illegible]7086, Page 0026, Deed Records, [illegible] Texas, a distance of 358.20 feet to an iron rod found for corner;

THENCE S 89°58'15" W along the north line of said Beltway Office Park Tract III a distance of 139.93 feet to an iron rod found for corner;

THENCE N 00°01'49" W a distance of 359.97 feet to an iron rod found for corner situated in the curving south line of said Belt Line Road;

THENCE along the curving south line of said Belt Line Road the following:

Along said curve to the left having a central angle of [illegible] of 2914.79 feet, an arc length of [illegible], and a chord bearing of [illegible] to an 'X' cut found for corner;

N 89°58'38" E a distance of [illegible] feet to the [illegible] containing 89,192 square feet or 1.1832 acres of land. [illegible]

Exhibit B

#R9-3

John T. Evans Co.

Tad Weatherford
Assistant Vice President
214-891-3202

November 8, 2004

Bryan Langley, CGFO
Assistant Finance Director
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254-7606

Re: Chili's Lease Extension for 4500 Beltline Road, Addison Texas

Dear Bryan:

There are two basic ways to approach the Chili's lease extension. The Town of Addison can either negotiate the base rent up to what we estimate will be market rates per square foot for the building floor area in 2012 and leave the percentage rent about where it is, currently 3%, or accept something similar to what they have offered for the base rent and raise the percentage rent to around 6%. Currently the Town only controls the land under the building. The original agreement with Chili's was a ground lease in which the Town was paid for the use of the land and the Town may have contributed some amount of money to help Chili's with the construction of their building. The major difference in your position now versus what it will be in 2012 is that after the primary term has concluded, and both sides have fulfilled their primary term obligations, the Town now technically owns the land and the building. This structure change will allow the Town to command more money for the property. Assuming Chilis' sales volumes stay similar to what they are today, the Towns rental income will be about the same under either scenario (around $150,000 per year in rental income). Conservatively, I feel rents today would be around $22.00 per square foot on a restaurant building of 5,694 square feet located in this area. Under the first scenario adjusting this with a conservative annual rental increase of 2% would yield a base rent in 2012 of $145,310.00. This scenario would also likely have a percentage rental payment of 3% or slightly greater. Under the second scenario, if Chili's pays $75,000 per year base rental versus 6% percentage rent with an average sales volume of $2,500,000.00 you arrive at a percentage rental payment of $75,000 in addition to the base rent.

The increase in the percentage rather than the base rent may be easier for Chili's to accept, in that if they continue to do well, then everybody does well, if they don't do well then their rental obligation is well below what market will be at that time. Ultimately, as Landlord, the Town must determine whether it is best suited with a guaranteed stable income with slightly less upside, or if it is willing to take more risk with greater upside and downside.

Please call me if you wish to discuss this further.

Sincerely,

Tad Weatherford
Assistant Vice President

TW/lb

Council Agenda Item: #R10

SUMMARY:
For the Addison City Council to consider a resolution to authorize the City Manager to negotiate and enter a contract with Allyn & Company, as the Town's public relations firm for the Town's effort to have the Cotton Belt Rail Line included in DART's 2030 System Plan Update.

FINANCIAL IMPACT:
Budgeted Amount: $100,000

Cost: $175,000 (estimated)
($350,000 total, split 50/50 between Addison and Richardson)

BACKGROUND:

Currently, DART is in the process of developing their 2030 Transit System Plan. In April 2004, DART hosted a public meeting in Addison to obtain comments regarding this process. Approximately 300 people attended the meeting with the majority of the comments referencing the Cotton Belt alignment.

For the last several months, the City of Richardson and Addison have been in discussions with Allyn & Company on developing a public relations strategy to demonstrate the merits of the Cotton Belt and to ensure that it is included in the DART's 2030 Plan.

Allyn & Company has proposed a thorough media relations campaign that includes media relations management, the development of contact databases, campaign messages, press releases, media training, target marketing, public opinion surveys, etc. Allyn's contract proposal is approximately $350,000 that includes a $20,000 per month retainer for 12 months, plus additional expenses related to advertising purchases, survey development, visual aids, etc. All expenses related to this contact will be equally divided between Addison and Richardson.

Allyn & Company is a very reputable firm in Texas that is well connected in local and state politics and has managed election campaigns for Mexican President Vicente Fox, Mayor Laura Miller, then Governor George W. Bush, and the most recent Dallas Cowboys/Arlington Football Stadium initiative.

RECOMMENDATION:
Approval.

#R10-2

December 13, 2004

LETTER OF AGREEMENT

Mr. Ron Whitehead
City Manager, Town of Addison
5300 Belt Line Road
Addison, Texas 75001

Dear Ron:

Based on our recent meetings, the following is an outline of responsibilities and terms under which our firm would serve as the primary public relations firm for the Town of Addison specifically regarding your efforts to add the Cotton Belt Rail Line to the 2030 DART rail service master plan.

RESPONSIBLITIES

With the signed approval of this agreement, Allyn & Company will serve as the lead public affairs consultant and retain responsibility for all public affairs and advertising projects related to this effort, from January 1, 2005 through December 31, 2005, with continued service on a month-to-month basis beyond this term.

Allyn & Company professionals will work with elected officials and staff in Addison to define key issues and campaign themes, develop a comprehensive strategy, then draft a paid media and direct-mail plan and budget for the public relations effort.

As a public affairs and public relations agency, Allyn & Company's in-house team of public relations professionals, press relations specialists, public affairs consultants, writers, art directors, media buyers and event managers will work closely with representatives of Addison to accomplish the following:

- Oversee recruitment and development of a coalition of like-minded elected officials, civic activists and business leaders and manage their efforts to influence the media, public and DART Board
- Define key campaign themes and effort strategy
- Analyze existing poll data to craft campaign messages
- Lay out the basic message matrix defining key positives and negatives for the Addison position, anticipating what supporters and opponents will say for and against these positions, and effectively countering opposition arguments
- Draft second survey and pitch favorable survey data to local media
- Media and testimony training for up to 3 key spokespeople: instruction on press interviews, bridging techniques, techniques for addressing negative attacks, and general image and communications skills
- Develop and execute a comprehensive media relations plan targeting key media, business, civic and governmental decision makers

- Draft all press-related materials including media advisories, news releases, timelines, visual aids, media kits and supplemental materials
- Distribute, pitch and follow up on press releases and media advisories
- Brief and update key journalists covering transportation, business and city hall issues
- Draft and place by-lined op-eds supporting our position over the signature of key leaders
- Plan media events and news conferences to highlight key messages
- Organize editorial board meetings with *The Dallas Morning News* and *Dallas Business Journal*
- Draft and generate letters to the editor in local newspapers
- Develop an aggressive, message-driven plan and budget of direct mail and other controlled-channel communications activities designed to educate the public and the media about our positions and issues
- Create concepts, write and handle turnkey targeting, production and placement for creative collateral projects to build awareness for our position among opinion leaders and targeted municipal, county and state officials
- Use these communications projects to build a comprehensive coalition database that may be activated as needed to educate the DART Board and other influential leaders

FEES & TERMS

For our services as lead public relations, advertising and public affairs agency of record for this project, Addison would retain Allyn & Company for a consulting fee of **$20,000.00 per month** for a fixed term from January 1, 2005 through January 1, 2006, with such term to be extended, as needed, on a month-to-month basis should additional services be needed from our firm.

We do not bill hourly, so this single flat monthly fee will cover the cost of our professional time to create and execute the strategy, messages and PR/public affairs campaign, including our consulting and the media relations, third-party coalition building and other strategic services outlined above.

In addition, Allyn & Company will have exclusive responsibility for creating, producing and placing or distributing any direct mail, phone banks, collateral materials, advertising, direct mail, print or broadcast advertising, signage, outdoor advertising or audiovisual presentations required to achieve the objectives. Estimates of our fees and costs for these creative, production and communications tools would fall outside of our retainer, and would be provided to you or your authorized representative for approval in advance.

These costs will include our standard creative/production fees for such projects, along with printing and placement costs, and list, mail fulfillment, postage and any other expenses needed to carry each project through completion. In addition, our firm will receive the standard agency commission which will be included in the cost of any media placement relative to the project.

In addition, any expenses incurred by our firm in the process of serving your account (travel, long distance, postage, courier/express, copying, etc.) will be billed to Addison with the appropriate accounting attached.

Our terms of payment for all projects are 50% of project fees upon commencement and the remaining 50% upon completion, with no new projects commencing while the campaign carries an outstanding balance. In addition, all printing, mail shop, media placement and postage expenses must be paid 100% in advance at time of printing, placement or mailing.

ADDENDUM A: SERVICE CONTRACT

This agreement, and any future projects and agreements between Allyn & Company and Addison, are subject to the terms and conditions outlined in Addendum A (service Contract), attached to this agreement.

CONCLUSION

Finally, Ron, we thank you for your confidence in our work. We look forward to helping you achieve your goals.

Sincerely,

Brian Mayes

Please sign and return one copy to Allyn & Company.

_____	_____
Allyn & Company	Ron Whitehead, Town of Addison
_____	_____
Date	Date

ADDENDUM A: SERVICE CONTRACT

This Service Contract (the "Contract") is made as of the date it is signed below, by and between Addison ("Addison") and Robert Allyn & Company, Inc. ("Allyn"), a Texas Corporation.

RECITALS

The parties above hereto set forth their agreement as to services to be performed by Allyn on behalf of Addison.

Given the nature of the consulting business, nothing in this contract or the attached Letter of Agreement is intended to indicate a guarantee of success in this venture or obtaining the desired results, but it is intended that all parties will use their best efforts to obtain such results.

Therefore, in consideration of the premises and of the benefits to accrue to each of them under this contract, the parties hereby agree as follows:

ARTICLE I: ALLYN'S OBLIGATIONS

1.01 **Services.** Attached as part of this contract is a Letter of Agreement which outlines services to be provided by Allyn to Addison under this contract. Any additional services requested or provided, whether oral or written, and whether before, during or after the services outlined in this contract or the Letter of Agreement, shall be included within the applications of this contract.

1.02 **Scheduling.** Allyn will provide services at times and schedules approved by both parties. In the event that approvals requested by Allyn from Addison are not timely received, the schedule will be adjusted on a day for day basis. Unless specifically agreed to in advance, any approvals received after 5:00 p.m. Central Time will be considered as having been provided on the following business day. Allyn does not accept any responsibility for the failure of mail services to deliver mail on a timely basis. Estimated mail schedules may be provided based on past experience, but such estimates are not warranted, as Allyn has no control on timely delivery of mail.

1.03 **Reimbursements.** Unless agreed to otherwise in this contract, Allyn shall be reimbursed for all reasonable and necessary out-of-pocket expenses relating to the performance of this contract.

1.04 **Professional Judgment.** Allyn shall use its best professional judgment in providing advice to the client. However, it is the client's ultimate responsibility to accept or reject such judgment, and Allyn is not responsible for the consequences of such acceptance or rejection.

ARTICLE II. ADDISON'S OBLIGATIONS

2.01 **Compensation to Allyn.** Addison shall provide full payment to Allyn as outlined in the attached Letter of Agreement. Third-party costs such as postal fees and advertising placement may require payment prior to the time the service is rendered. Any variation thereof does not constitute waiver of the policies as outlined in the Letter of Agreement.

2.02 **Approvals and Changes.** Addison agrees that they will be responsible for the accuracy and completeness of statements provided to Allyn for printed materials, media-related or publicly released work. Allyn will assume the accuracy of statements made to them from Addison regarding their past history and other information. Addison further warrants that they will obtain all approvals necessary from third parties regarding quotes, use of name, likeness, trademark, quotations, words or endorsements.

MISCELLANEOUS

3.01 **Assignability.** Performance by Allyn under this agreement is non-assignable. Any payment due or outstanding balance under this agreement may be assigned as deemed prudent or necessary to a third party.

3.02 **Notices.** Notices permitted hereunder shall be in writing and effected either by personal delivery, facsimile transmission and by mail, registered or certified, postage pre paid return receipt requested. Any mail deposited with the United States Postal service shall be considered delivered when postmarked after surrender to the said service or delivered to and dated by an alternative overnight carrier. Notice shall be considered given when sent or delivered to:

ALLYN:	3232 McKinney Avenue Suite 660 Dallas, Texas 75204 FAX (214) 871-7767
Addison:	5300 Belt Line Road Addison, Texas 75001

3.03 **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION ARISING HEREUNDER SHALL BE DALLAS COUNTY, TEXAS.

3.04 **Multiple Counterparts.** This agreement may be executed in separate or multiple counterparts. All of such counterparts shall be deemed but one and the same Agreement, but only one copy with evidence of signatures shall be required for proof of this agreement.

3.05 **Singular, Plural, Headings.** Wherever the singular form of any form is used in this Agreement, the same shall include the plural form of such work, whenever appropriate, and vice versa. The headings contained in this Agreement are for purpose of reference only and shall not limit or otherwise affect the meaning of the provisions contained herein.

3.06 **Interest Rate.** The interest rate charged on any amounts that remain unpaid for more than thirty days shall be 1.5% per month or the highest maximum allowed by law, whichever is greater. At no point is this amount intended to be usurious and if the fixed percentage above is determined to exceed acceptable interest rates, then the maximum allowed by law will be used.

MEDIATION AND ARBITRATION

4.01 **Mediation.** For any dispute regarding this contract, non-binding mediation will be attempted prior to binding arbitration. If parties are unable to agree upon a neutral mediator, parties will proceed to binding arbitration as provided for under Section 4.02 of this Agreement.

4.02 **Terms of Arbitration.** Arbitration shall be conducted in the county in which most of the activity of the agreement takes place and binding upon the parties to this agreement and their successors or assigns. The rules of the American Arbitration Association shall be used for any arbitration. Arbitration shall be commenced by written notice by the party requesting the arbitration (the "Petitioner") served on the other party (the "Respondent") stating the substance of the controversy, dispute or claim of the Petitioner. A single arbitrator shall be used if the parties can agree upon one. Otherwise, each party shall appoint one arbitrator within thirty (30) days after receipt of written notice of intent to arbitrate. The two arbitrators so appointed shall together appoint a third arbitrator within fifteen (15) days after their appointment. Should either party fail to appoint an arbitrator within the time allowed, the single appointed arbitrator will be allowed to decide the dispute. The arbitrators may limit discovery or make other evidentiary rulings. Arbitration is binding upon all parties.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed:

On behalf of: Robert Allyn & Co., Inc.	On behalf of: Addison
_____	_____
_____ Date	_____ Date

Addison: Cotton Belt Effort
DRAFT Campaign Estimate
December 8, 2004

Logo/Graphic Identity Development
Allyn & Company to design an attention-getting name and graphic identity for the coalition of Cotton Belt line supporters. Costs include our work in creating a coalition name and designing logo, letterhead, and envelopes.

Graphic Identity Design	$1,750.00

Survey for Public Release
Allyn & Company to research, draft and oversee implementation of a survey to be released to the press measuring public attitudes on adding the Cotton Belt line to the DART master plan. Survey will ask approximately 20 questions to test public support/opposition and test messages both for and against the rail line. Cost includes our work writing survey draft, setting up phone bank and creating a press-ready document. Cost is based on 500 completed surveys.

Survey for Public Release	$12,500.00

Voter Database/List Development
Allyn & Company will manage organization of voter database to be used for direct mail and phone banks throughout the effort. Database will consist of approximately 30,000 households within targeted DART member cities who have consistently voted in municipal elections.

In addition, Allyn & Company will manage data entry and organization of a database of households identified as supporters of the Cotton Belt line through phone banks and direct mail reply cards. Cost includes fees for Post Office box rental to receive reply cards and data input.

Voter Database (30k)	$5,000.00

Visual Aids
Allyn & Company to design and handle turnkey printing and production for all posters, banners, graphs and other visual aids to be used at press events, town hall meetings and other public meetings. Cost estimates will be presented for approval before production of any visual aid.

Visual Aids	$5,000.00

Launch Letter
Allyn & Company will create concept, write and handle turnkey production, printing, mailing and delivery for an attention-getting letter package educating recipients on the benefits of the Cotton Belt alignment as opposed to the proposed alternate line along LBJ Freeway. Cost includes our work in drafting and designing letter package, plus costs for printing, mail fulfillment and postage for a target quantity of 30,000 households.

Creative Production	$2,500.00
Printing /Mail Service (30K)	4,800.00
Estimated Postage (30K @ $0.20 each)	6,000.00
Subtotal: Launch Letter Package	$13,300.00

Education Brochure
Allyn & Company will create concept, write and handle turnkey production, printing and delivery for a brochure highlighting key messages for the inclusion of the Cotton Belt line as part of the DART 2030 Plan as opposed to the proposed alternative line along the LBJ Freeway. Recipients will be encouraged to return a reply card in order to build a database of supporters. Piece will be mailed to approx. 30,000 households. Costs are based on a one-fold brochure with a detachable reply card.

Creative Production	$3,250.00
Printing /Mail Service (30K)	9,700.00
Estimated Postage (30K @ $0.20 each)	6,000.00
Subtotal: Education Brochure	$18,950.00

Call to Action Brochure
Allyn & Company will create concept, write and handle turnkey production, printing and delivery for a brochure highlighting key messages for the inclusion of the Cotton Belt line as part of the DART 2030 Plan and a call to action urging recipients to contact their city leaders voicing their support. Piece will be mailed to approximately 30,000 households. Costs are based on a tabloid-style brochure.

Creative Production	$3,250.00
Printing/Mail Service (30K)	10,250.00
Estimated Postage (30K @ $0.20 each)	6,000.00
Subtotal: Call to Action Brochure	$19,500.00

***The Dallas Morning News* Suburban Ad Series**

Allyn & Company will create concept, design, write and layout an attention-getting, half-page newspaper advertisement series presenting key message in support of the Cotton Belt alignment. Cost includes our work in drafting and designing attention-getting, camera-ready ads and placement in targeted suburban sections of *The Dallas Morning News*: Collin (Plano), Northwest (Addison and Carrolton) and Richardson.

Creative/Production (2 half-page ads)	$ 3,500.00
Ad Placement (2 half-page ads)	11,705.02
Subtotal: Newspaper Ads	$15,205.02

Activist/Patch-Through Phone Bank

Allyn & Company will handle turnkey scripting and oversight for a professional phone bank with an immediate call-to-action message and ability to patch through to activists' local city council or DART Board offices. Costs are based on four days of patch-through phone calls connecting recipients identified as Cotton Belt alignment supporters to targeted municipal offices and DART Board members.

Data Processing/Set Up	$ 1,500.00
Patch-Through Calls (8hrs/day x 4 days)	12,000.00
Subtotal: Activist Phone Bank (4 days)	$ 13,500.00

Misc. Expenses

Additional costs will most likely be incurred during the campaign such as additional photography for brochures, supplemental lists, etc. Costs for such projects will be provided for approval in advance of expenditure.

Misc. Expenses	$2,500.00

Summary of Estimated Costs

Graphic Identity	$1,750.00
Survey for Press Release	12,500.00
Voter Database	5,000.00
Visual Aids	5,000.00
Launch Letter	13,300.00
Education Brochure	18,950.00
Call to Action Brochure	19,500.00
Newspaper Ads	15,205.02
Patch-Through Phone Bank	13,500.00
Misc. Expenses	2,500.00
Estimated Total	**$107,205.02**

All costs are estimated. Final costs will be provided upon approval of each project's creative layout and design. **Costs do not include applicable sales tax**. Costs do not include photography needed for the brochures. Costs do not include standard operating expenses such as long distance, courier/Fed Ex, travel expenses, etc. These expenses will be included with your regular billing with the appropriate accounting attached.

THANK YOU